

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016

1-4

Page 1	Page 3
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 WESTERN DISTRICT OF WISCONSIN</p> <p>3</p> <p>4 The Estate of TONY )</p> <p>ROBINSON, JR. ex. Rel. ) NO. 3:15-CV-502</p> <p>5 Personal Representative )</p> <p>ANDREA IRWIN, )</p> <p>6 )</p> <p>Plaintiff, )</p> <p>7 )</p> <p>vs. )</p> <p>8 )</p> <p>The CITY OF MADISON, )</p> <p>9 WISCONSIN and MADISON )</p> <p>POLICE OFFICER MATTHEW )</p> <p>10 KENNY, )</p> <p>)</p> <p>11 Defendants. )</p> <p>)</p> <p>12 _____)</p> <p>13</p> <p>14</p> <p>15</p> <p>16 DEPOSITION OF JOHN G. PETERS, JR., PH.D.</p> <p>17 Taken at Esquire Deposition Solutions</p> <p>at 2300 West Sahara Avenue</p> <p>18 Suite 770</p> <p>Las Vegas, Nevada 89102</p> <p>19</p> <p>20 On Thursday, October 20, 2016</p> <p>at 9:13 a.m.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Reported by: Jualitta Stewart, CCR No. 807, RPR</p>	<p>1 I N D E X</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 JOHN G. PETERS, JR., PH.D.</p> <p>5 Examination by Mr. Owens 4</p> <p>6 Examination by Mr. Hall 246</p> <p>7 Further Examination by Mr. Owens 249</p> <p>8</p> <p>9 --o0o--</p> <p>10</p> <p>11</p> <p>12 E X H I B I T S</p> <p>13</p> <p>14 PLAINTIFF'S PAGE</p> <p>15 Exhibit 214 - Expert Report of 7</p> <p>John G. Peters, Jr., Ph.D.</p> <p>16</p> <p>Exhibit 215 - "Police and Security News" 35</p> <p>17 Article</p> <p>18 Exhibit 216 - "Police and Security News" 38</p> <p>Article</p> <p>19</p> <p>Exhibit 217 - Handwritten Document 105</p> <p>20</p> <p>Exhibit 218 - "White Paper Report on 106</p> <p>Excited Delirium Syndrome"</p> <p>21</p> <p>Exhibit 219 - Handwritten Document 221</p> <p>22 Exhibit 220 - Handwritten Notes 221</p> <p>23 Exhibit 221 - Judicial Decision by IPICD 243</p> <p>24</p> <p>25 --o0o--</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 For the Plaintiff:</p> <p>3 DAVID B. OWENS, ESQ.</p> <p>ANAND SWAMINATHAN, ESQ.</p> <p>4 Loevy &amp; Loevy</p> <p>311 North Aberdeen</p> <p>5 Third Floor</p> <p>Chicago, Illinois 60607</p> <p>6 (312) 243-5900</p> <p>7</p> <p>For the Defendant, Matthew Kenny:</p> <p>8</p> <p>SAMUEL C. HALL, JR., ESQ.</p> <p>9 Crivello Carlson</p> <p>710 North Plankinton Avenue</p> <p>10 Suite 500</p> <p>Milwaukee, Wisconsin 53203</p> <p>11 (414) 271-7722</p> <p>12</p> <p>For the Defendant, City of Madison:</p> <p>13</p> <p>KATHRYN HARRELL, ESQ. (via phone)</p> <p>14 Boardman &amp; Clark</p> <p>1 South Pinckney Street</p> <p>15 Suite 410</p> <p>Madison, Wisconsin 53701</p> <p>16 (608) 283-1744</p> <p>17</p> <p>18</p> <p>19</p> <p>20 --o0o--</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 LAS VEGAS, NEVADA;</p> <p>2 Thursday, October 20, 2016; 9:13 A.M.</p> <p>3</p> <p>4 JOHN G. PETERS, JR., PH.D.,</p> <p>5 having been first duly sworn, testified as follows:</p> <p>6</p> <p>7 EXAMINATION</p> <p>8 BY MR. OWENS:</p> <p>9 Q. Good morning, Dr. Peters.</p> <p>10 A. Good morning.</p> <p>11 Q. Could you please state and spell your</p> <p>12 name for the record.</p> <p>13 A. It's John G. Peters, Jr., P-e-t-e-r-s.</p> <p>14 Q. And Mr. -- or Dr. Peters, excuse me,</p> <p>15 you've been retained as an expert to give opinions</p> <p>16 in this case, Tony Robinson versus city of Madison;</p> <p>17 is that right?</p> <p>18 A. That's correct.</p> <p>19 Q. And you prepared a report in this case?</p> <p>20 A. Yes.</p> <p>21 Q. And I know from that report and your</p> <p>22 testimony chart that you've given depositions</p> <p>23 before?</p> <p>24 A. Several times.</p> <p>25 Q. And you have testified in court?</p>

800.211.DEPO (3376)  
EsquireSolutions.com

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016

5-8

<p style="text-align: right;">Page 5</p> <p>1 A. Yes.</p> <p>2 Q. And if you had to estimate, how many</p> <p>3 times have you given a deposition?</p> <p>4 A. It would be an estimate, probably, I</p> <p>5 don't know, 150.</p> <p>6 Q. What about court, how many times have you</p> <p>7 testified in court, if you had to estimate?</p> <p>8 A. At least probably 75 times, I would</p> <p>9 estimate.</p> <p>10 Q. So I think you know having testified at</p> <p>11 least, you know, more than 200 times just sort of</p> <p>12 how this works?</p> <p>13 A. Oh, yeah, I know the rules.</p> <p>14 Q. We'll go over it and, of course, you know</p> <p>15 we need out loud answers and that this is your</p> <p>16 testimony just as if it were in court. And that</p> <p>17 unless there's some kind of privilege objection, Sam</p> <p>18 or Katie object, you still have to answer the</p> <p>19 question.</p> <p>20 A. Correct.</p> <p>21 Q. And the -- I want to be clear in your</p> <p>22 report you have prepared a statement about your</p> <p>23 right to amend your report.</p> <p>24 Are you familiar with that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 7</p> <p>1 but as far as having a template and fill in blocks</p> <p>2 or something no, I don't have anything like that.</p> <p>3 Q. Okay. And we can go ahead and just mark</p> <p>4 this as Exhibit 214.</p> <p>5 (Whereupon, Exhibit 214 was</p> <p>6 marked for identification.)</p> <p>7 BY MR. OWENS:</p> <p>8 Q. And Dr. Peters, this is the report you</p> <p>9 prepared in this case; is that correct?</p> <p>10 A. Looks like it. I didn't prepare it back</p> <p>11 to back pages like this, but I'm sure for saving</p> <p>12 trees that was the purpose behind it. But yes, this</p> <p>13 looks like my report.</p> <p>14 Q. Okay. And all of the opinions you have</p> <p>15 in this case, are they contained in this report?</p> <p>16 A. Yes.</p> <p>17 Q. Do you have any new opinions to add?</p> <p>18 A. Not at this time.</p> <p>19 Q. Have you reviewed any additional</p> <p>20 information since preparing this report?</p> <p>21 A. No.</p> <p>22 Q. Okay. And I want to just make this clear</p> <p>23 so that we're on the same page, given the statement</p> <p>24 that you made in your right to amend, my questioning</p> <p>25 today is limited to exploring what your opinions are</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. Is that something you routinely include</p> <p>2 in all your reports?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have a basic template that you use</p> <p>5 in writing your reports?</p> <p>6 A. I don't have a basic template so much,</p> <p>7 the front end of the report where I go through and</p> <p>8 identify how I do the analysis and some of my</p> <p>9 background, that pretty much is a cut and paste and</p> <p>10 then updated depending on the -- on a time frame.</p> <p>11 But outside of that, no. For probably the first</p> <p>12 20 years that I did this, I put the summary of facts</p> <p>13 first, and then in the last ten years I put it last.</p> <p>14 And the reason that I changed that, I</p> <p>15 guess you could call that a formatting procedure.</p> <p>16 I've done that because I was advised by some counsel</p> <p>17 that I should report -- go to the court, that the</p> <p>18 court wants to see your opinions, they should know</p> <p>19 the history. So that's why I made that change.</p> <p>20 So template-wise, I guess we could say</p> <p>21 formatting, I stick to a style and then within the</p> <p>22 report, the opinions themselves, I've always done</p> <p>23 preincident, incident and postincident as</p> <p>24 categories.</p> <p>25 So that part would probably be the same,</p>	<p style="text-align: right;">Page 8</p> <p>1 that are expressed in this report and to clarify</p> <p>2 what exactly you're saying. At no point is any</p> <p>3 question I ask you intended to elicit a new opinion</p> <p>4 or serve as grounds for a new opinion.</p> <p>5 A. Understood.</p> <p>6 MR. HALL: Object to form.</p> <p>7 BY MR. OWENS:</p> <p>8 Q. And so just so we can agree, you don't</p> <p>9 have any new opinions that haven't been disclosed to</p> <p>10 us, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. I want to just clarify a couple</p> <p>13 things in your report at the outset, just some</p> <p>14 clarification points. So forgive me if we're</p> <p>15 jumping around.</p> <p>16 A. That's fine.</p> <p>17 Q. I'll use the page numbers on the bottom</p> <p>18 as you've done it here.</p> <p>19 A. Okay.</p> <p>20 Q. So on page No. 3 in that right to amend</p> <p>21 paragraph in which we were describing, you -- here</p> <p>22 there's a clause in the second line that says "or in</p> <p>23 response to expert disclosures of the defendants,"</p> <p>24 should that be plaintiffs?</p> <p>25 A. It probably should be plaintiffs or</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
9-12

<p style="text-align: right;">Page 9</p> <p>1 defendants. Any expert disclosure, any additional</p> <p>2 reports -- as you know, I don't run the case file on</p> <p>3 this, so I don't know who's always been retained and</p> <p>4 sometimes people get retained at the very last</p> <p>5 minute, reports come in late so.</p> <p>6 Q. So this should say "of the plaintiffs or</p> <p>7 defendants"?</p> <p>8 A. Correct.</p> <p>9 Q. So it's just any party?</p> <p>10 A. Any party, correct.</p> <p>11 Q. Okay. Are you aware of the -- whether or</p> <p>12 not the defendants in this case, the City of Madison</p> <p>13 or Officer Kenny, are intending to produce</p> <p>14 additional expert reports?</p> <p>15 A. I have no idea.</p> <p>16 Q. You haven't been told that or learn that</p> <p>17 through some other means?</p> <p>18 A. No.</p> <p>19 Q. Okay. Now, also on page No. 3, you have</p> <p>20 here this "Opinion Methodology" paragraph. Now, is</p> <p>21 this something that's part of the template that you</p> <p>22 include in all of your reports?</p> <p>23 A. For the most part, yes.</p> <p>24 Q. Okay. And I just have a question. You</p> <p>25 say in the Opinion Standards, "Expressed opinions</p>	<p style="text-align: right;">Page 11</p> <p>1 profession, recommendations, proposed model</p> <p>2 policies, those types of things that would be</p> <p>3 referenced as part of the professional certainty or</p> <p>4 professional side of the law enforcement industry.</p> <p>5 Q. Okay. So given the distinction that you</p> <p>6 just gave us, are there both scientific and</p> <p>7 professional opinions expressed in your report or</p> <p>8 are they just professional?</p> <p>9 A. There's a mix. I believe in one of the</p> <p>10 opinions I cited a scientific study that was</p> <p>11 published in one of the journals that had, I</p> <p>12 believe, a sample size of about 76 on officer memory</p> <p>13 and recall. That was referenced as a basis of the</p> <p>14 opinion, that would be scientific support as a basis</p> <p>15 for that opinion.</p> <p>16 And as it was integrated into the</p> <p>17 situation, it would also help explain or, from my</p> <p>18 perspective, dilute the plaintiff's expert in police</p> <p>19 practices opinion. So you get a little bit of both,</p> <p>20 but the basis for the opinion would be partially</p> <p>21 scientific based on the study and then it would be</p> <p>22 how it would be applied.</p> <p>23 Q. Okay. So other than the last opinion,</p> <p>24 which you just referenced, concerning the</p> <p>25 fallibility of Officer Kenny's memory during --</p>
<p style="text-align: right;">Page 10</p> <p>1 are to a reasonable degree of scientific certainty</p> <p>2 and/or to a reasonable degree of professional</p> <p>3 certainty," right?</p> <p>4 A. Correct.</p> <p>5 Q. Now, is there a difference between</p> <p>6 scientific certainty and professional certainty?</p> <p>7 A. Yes.</p> <p>8 Q. And what are the differences between</p> <p>9 those?</p> <p>10 A. Scientific certainty would have as its</p> <p>11 framework some type of statistical analysis</p> <p>12 generally. In some cases it could be reliability,</p> <p>13 coefficients, correlation coefficients, sample size,</p> <p>14 depending on the type of statistical test that may</p> <p>15 have been administered, whether it was appropriate,</p> <p>16 whether the sampling was appropriate.</p> <p>17 So answers that would be -- or findings</p> <p>18 would be a better way to phrase it. Findings that</p> <p>19 would be based on various studies that then would be</p> <p>20 used or referenced would go to the category of</p> <p>21 scientific certainty.</p> <p>22 Q. Okay. What about the other side?</p> <p>23 A. Professional certainty would include</p> <p>24 experiential information, behaviors, and it may also</p> <p>25 include what we would call in the law enforcement</p>	<p style="text-align: right;">Page 12</p> <p>1 related to the incident, is there anything that</p> <p>2 draws upon scientific certainty?</p> <p>3 A. Well, it depends how we define, in a</p> <p>4 sense, scientific certainty. And I don't mean that</p> <p>5 to be evasive. But, if we're looking at</p> <p>6 quantitative results, for example, looking at</p> <p>7 Officer Kenny's training record with all the</p> <p>8 training hours and with all the courses, one could</p> <p>9 count those and look at the hours, that would be</p> <p>10 scientifically based from a -- strictly hours and</p> <p>11 number of courses sort of a cumulative effect.</p> <p>12 So if we want to look back and say he</p> <p>13 had, lets say, ten hours of training, that would be</p> <p>14 a statistical analysis to a degree, which could also</p> <p>15 be imputed to some type of comparative analysis to</p> <p>16 other officers maybe in other states. I don't think</p> <p>17 it was done that way, I didn't use it that way, but</p> <p>18 it was a basis for one of the opinions that hey, I</p> <p>19 looked at this training record and he was trained</p> <p>20 according to Wisconsin standards.</p> <p>21 Q. So it's your opinion that looking at the</p> <p>22 number of hours that somebody was trained involves</p> <p>23 expressing opinions to a degree of scientific</p> <p>24 certainty?</p> <p>25 A. No, it's just a quantitative analysis. I</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
13-16

<p style="text-align: right;">Page 13</p> <p>1 wouldn't say it's scientific because there wasn't a</p> <p>2 study done. There wasn't a comparative study done,</p> <p>3 but it is -- it's still quantitative.</p> <p>4 Q. Okay. So which opinions, just so we're</p> <p>5 clear, there are I think seven opinions; is that</p> <p>6 right?</p> <p>7 A. Let me check.</p> <p>8 Q. No, excuse me.</p> <p>9 A. Eight opinions.</p> <p>10 Q. There are eight opinions?</p> <p>11 A. Correct.</p> <p>12 Q. Can you go ahead and highlight the</p> <p>13 opinions to which you hold to a reasonable degree of</p> <p>14 scientific certainty as defined in the distinction</p> <p>15 between professional and scientific certainty that</p> <p>16 you gave us a minute ago?</p> <p>17 MR. HALL: To be clear, you're looking at</p> <p>18 just the number of the opinion or do you want him to</p> <p>19 go through all 13 pages of the report or are you</p> <p>20 just referring to the heading of the opinion, I</p> <p>21 guess?</p> <p>22 BY MR. OWENS:</p> <p>23 Q. Do you understand the question?</p> <p>24 A. As I understand it, you just want me to</p> <p>25 identify the opinions that are either scientific or</p>	<p style="text-align: right;">Page 15</p> <p>1 applications on a human"?</p> <p>2 A. Correct.</p> <p>3 Q. And you've highlighted -- excuse me,</p> <p>4 Opinion No. 8, right?</p> <p>5 A. Correct.</p> <p>6 Q. That stressful events, such as the use of</p> <p>7 deadly force, do have an impact on witness recall</p> <p>8 contrary to Mr. Waller's testimony?</p> <p>9 A. Correct.</p> <p>10 Q. I will slow down. Sorry.</p> <p>11 So these are the three opinions to which</p> <p>12 you hold to a reasonable degree of scientific</p> <p>13 certainty?</p> <p>14 A. Those have the elements of science</p> <p>15 imputed to those opinions as a basis for the</p> <p>16 opinions more so than the others.</p> <p>17 Q. Okay. So my question was a little bit</p> <p>18 different, which is: Are these opinions you hold to</p> <p>19 a reasonable degree of scientific certainty?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And now, you hesitated and thought</p> <p>22 about, it looks, and you can help me understand what</p> <p>23 you were doing -- excuse me -- with respect to</p> <p>24 Opinion No. 7?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 14</p> <p>1 professional or a combination of both.</p> <p>2 Q. No, what I'd like you -- I'll clarify.</p> <p>3 A. Okay.</p> <p>4 Q. So what I would like you to do is</p> <p>5 underline, lets just start with the bolded bullet</p> <p>6 line, the ones that are to a degree of scientific</p> <p>7 certainty.</p> <p>8 MR. OWENS: And for the record, the</p> <p>9 witness has a orange highlighter which to mark the</p> <p>10 document.</p> <p>11 BY MR. OWENS:</p> <p>12 Q. Are you done?</p> <p>13 A. I think so.</p> <p>14 Q. Okay. So can I see the report, Doctor?</p> <p>15 A. Sure.</p> <p>16 Q. So just to be sure, you've highlighted</p> <p>17 Opinion No. 2?</p> <p>18 A. Correct.</p> <p>19 Q. "No one knew if Mr. Robinson was in a</p> <p>20 state of excited delirium before or during Officer</p> <p>21 Kenny's engagement with him in close combat"?</p> <p>22 A. Correct.</p> <p>23 Q. You highlighted No. 4, which is</p> <p>24 "Officers, such as Officer Kenny, are trained not to</p> <p>25 use multiple TASER electronic control weapon</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. And we'll spend a lot of time discussing</p> <p>2 Opinion No. 7, but it looks like you considered</p> <p>3 highlighting something in -- on paragraph -- excuse</p> <p>4 me, page 9, the first full paragraph from the</p> <p>5 bottom; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. But you ultimately decided not to,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you're certain about that decision?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Page 8 of your report, Doctor --</p> <p>13 as I said, we'll be jumping around for a minute.</p> <p>14 A. That's fine.</p> <p>15 Q. I want to be clear about what some of</p> <p>16 this stuff means before we start digging into it.</p> <p>17 Do you see Opinion No. 6?</p> <p>18 A. Yes.</p> <p>19 Q. The first full paragraph. And then</p> <p>20 there's a sentence that begins, "Plaintiff's expert,</p> <p>21 Dennis Waller, Mr. Waller, appears to not have" --</p> <p>22 and then it says, "developed considered Officer</p> <p>23 Kenny."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
17-20

<p style="text-align: right;">Page 17</p> <p>1 Q. Am I correct that you meant to put one of 2 those words but probably not both? 3 A. Good catch. Correct. Or I may have had 4 or thought about putting and/or considered, but it's 5 a typo. 6 Q. Okay. So what's the final answer? 7 A. Let's see. Consider would be the correct 8 word. 9 Q. Okay. 10 A. Eliminate developed. 11 Q. Okay. Now, if you will go to page 23 of 12 your report. Now, this is the appendix that 13 summarizes the documents that you reviewed in 14 advance of your deposition today and in preparing 15 this report? 16 A. Correct. 17 Q. Okay. And just to be clear, you haven't 18 received any new additional documents, you haven't 19 looked at anything, correct? 20 A. No, this is it. 21 Q. Okay. And the first question I have for 22 you is No. 2, is DCI investigation, Bates stamped 23 DCI 1 through 1493. 24 Do you see that? 25 A. Yes.</p>	<p style="text-align: right;">Page 19</p> <p>1 materials just for ease and reading what the 2 document list was. So whether Officer Kenny's 3 interview document was on Flash Drive 3 and the DCI 4 investigation was on Flash Drive 1, I don't know. 5 Q. Okay. 6 A. I just write a list out and then I type 7 it. 8 Q. You recall that it was separate and 9 that's why you recorded it separately? 10 A. Yes. 11 Q. Okay. And there's no substantive meaning 12 or significance in listing it separately? 13 A. No, other than -- even if I get files 14 that are duplicative, I'll still list those as 15 separate files just to be transparent on what I 16 received. 17 Q. I appreciate it. And then "Deposition 18 Transcripts With Exhibits," No. 6, it says "Rafael 19 De la Rose"? 20 A. Yes. 21 Q. Should that be De la Rosa? 22 A. I would have to go back and look. I 23 believe it is Rosa. 24 Q. R-o-z-a or R-o-s-a? 25 A. I think R-o-s-a. You may be right on</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. And then No. 3 is Officer Kenny 2 interview, right? 3 A. Correct. 4 Q. And am I right that the Officer Kenny 5 interview is included in the documents that are in 6 referenced in No. 2? 7 A. Yes. 8 Q. Why did you separate this out? 9 A. I separated it out because I believe 10 that's how it arrived. I believe Officer Kenny's 11 interview was also a separate document even though 12 it was contained in the Bates stamp. So there was 13 some duplicative material there. So not to be 14 misleading in the list of documents, I just listed 15 everything separately. 16 Q. Okay. So you actually just -- the way in 17 which you have things listed here is the manner in 18 which you received them? 19 A. I won't say it's the manner in which I 20 received them. They came on flash drives. 21 Q. Okay. 22 A. So I've got like five flash drives. 23 Q. Okay. 24 A. So when I made the list, I tried to group 25 the depositions together and some of the other</p>	<p style="text-align: right;">Page 20</p> <p>1 that. 2 Q. Okay. So that's just a typo? 3 A. It could be a typo. I notice sometimes 4 in the report there are certain names, spellings and 5 then on depositions there's certain names, 6 spellings, and I'm not the arbiter of whose name is 7 spelled correctly. 8 Q. Got it. 9 A. That's how it probably came to be. 10 Q. All right. Like I said, we're going to 11 jump around a bit for now. 12 Going to page 5 of your report, Doctor. 13 A. Okay. 14 Q. Do you see the paragraph that begins 15 with, "Mr. Robinson was described," do you see that? 16 A. Yes. 17 Q. And do you see the last -- the second to 18 last line in that paragraph which says, "know they 19 much act quickly to capture and control the 20 individual," should that be must? 21 A. Yes. 22 Q. Okay. So that should be m-u-s-t? 23 A. Correct. 24 Q. Okay. 25 MR. OWENS: Could we just take a</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
21-24

<p style="text-align: right;">Page 21</p> <p>1 two-minute break. 2 (A recess was taken.) 3 BY MR. OWENS: 4 Q. On page 5 as well, the last sentence of 5 the first full paragraph, the top, there's a phrase 6 here which says "agitated chaotic events." 7 A. Correct. 8 Q. And there's a trademark there. What does 9 that mean? 10 A. Agitated chaotic events is a term we 11 developed in our institute to describe events where 12 the subject, the police are trying to capture and 13 control is agitated but the reasons are unknown as 14 to what is causing the agitation. We coined that 15 term probably five years ago, and since that time 16 some other groups have coined similar terms to 17 describe agitated events and behaviors with unknown 18 origin. 19 Q. Okay. And you'll just have to forgive 20 me, this is not my field of expertise. 21 A. That's okay. 22 Q. Is there a reason that you want to 23 trademark the particular phrase? Does that have 24 some particular meaning or importance in your 25 profession?</p>	<p style="text-align: right;">Page 23</p> <p>1 that you guys develop because in order to train 2 officers? 3 A. Yes. 4 Q. And is that something that you were 5 looking for a term that covered a variety of events 6 where an officer may not know whether or not this is 7 somebody's having a mental health issue, somebody is 8 having a response to some drug type of thing, some 9 combination, some excited delirium or something like 10 that, but a term that didn't apply to specific 11 medical or physiological thing for the training 12 officers consistently in responding to those types 13 of events? 14 A. No, it wasn't so much in training 15 officers in how to respond to those events because 16 the response would be fairly consistent. 17 Q. Okay. 18 A. Our concern was -- we, at that point, 19 were doing a lot of presentations on excited 20 delirium type behavioral cues. And it occurred to 21 us that if the only thing we were describing was 22 this term "excited delirium," there's multiple 23 causes of delirium-type behavior, which could be 24 postoperative anesthesia. Somebody hits their head 25 on the windshield at a car accident and goes into --</p>
<p style="text-align: right;">Page 22</p> <p>1 A. Well, at the time we developed it, it 2 didn't have any significance because we had just 3 developed it, but it was the first time that we were 4 aware of in this law enforcement community, and even 5 in the psychiatric community, where the phrase was 6 developed and it was a collaborative development. 7 We wanted to come up with a phrase or a term and the 8 acronym for this is ACE. 9 We needed something that wasn't a 10 psychological diagnosis and we needed something that 11 wasn't a medical diagnosis, but we needed something 12 that was a correct visual description. And when we 13 developed this, we basically just trademarked it. 14 We're in the process of getting it federally marked, 15 but we wanted to give it a little time for use and 16 also to make sure that it was appropriate for our 17 purposes. 18 Q. What do you mean by common law trademark? 19 A. Well, TM is just common law, it's not a 20 federally registered mark. It's not the R with the 21 circle around it. So we haven't applied for the 22 federal mark, we only did it under what we call 23 common law trademark, just the TM. 24 Q. Okay. So is -- and correct me if I'm 25 wrong, agitated chaotic events, is that a phrase</p>	<p style="text-align: right;">Page 24</p> <p>1 some type of delirious state. There is postictal 2 psychosis following epilepsy. And one of the 3 problems we identified was that officers were 4 putting this in their report as excited delirium, 5 when, in fact, they didn't know. 6 So we wanted to come up with an umbrella 7 term that would describe a set of behaviors that 8 officers would see but that would not in a sense 9 force them to make a diagnosis which they're not 10 qualified to make. 11 Q. Got it. And you said that the response 12 from an officer training perspective would be the 13 same regardless of whether it was excited delirium, 14 which they're not trained to diagnosis, or some 15 other type of delirium or mania? 16 A. Wouldn't necessarily be the same, but it 17 would be similar. 18 Q. Okay. How would it be different? 19 A. It would depend on the situation. If you 20 have somebody whose, for example, has postictal 21 psychosis following an epileptic seizure, the 22 behavior may be the same but your approach may be 23 very very different say from someone whose ingested 24 bath salt and is running out in the middle of 25 traffic. Versus someone who is in a hospital</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
25-28

<p style="text-align: right;">Page 25</p> <p>1 setting and goes off for some unknown reason.</p> <p>2 It's going to be events specific for the</p> <p>3 most part, but kind of go back to a term we used at</p> <p>4 the beginning, sort of a template. There's sort of</p> <p>5 a template that you can use to analyze some of these</p> <p>6 behaviors and say okay, this would be an agitated</p> <p>7 chaotic event, this may not be, this may be</p> <p>8 something totally different.</p> <p>9 Q. Okay. And when you've got some type of</p> <p>10 agitated chaotic event, the -- I know that the</p> <p>11 training and how to respond is event specific, but</p> <p>12 say let's take the example that you gave which is</p> <p>13 somebody running in the street acting crazy, right,</p> <p>14 and the officer doesn't know whether or not this</p> <p>15 person is having a mental health breakdown or</p> <p>16 whether or not they took bath salts, as you</p> <p>17 suggested, or maybe some other combination of, you</p> <p>18 know, factors that the officer doesn't know. He's</p> <p>19 been reported on behavior.</p> <p>20 In that situation, is the agitated</p> <p>21 chaotic event a term that you developed to describe</p> <p>22 that because it implies the officer doesn't know for</p> <p>23 certain what is leading to that behavior?</p> <p>24 A. Right, the cause of the behavior is</p> <p>25 unknown.</p>	<p style="text-align: right;">Page 27</p> <p>1 consistent with their training is by looking at the</p> <p>2 information the officer knew at the time, not what</p> <p>3 we learned from hindsight, right?</p> <p>4 A. Correct.</p> <p>5 Q. And speaking of hindsight, I want to back</p> <p>6 up a little bit. Earlier you used the term "law</p> <p>7 enforcement profession."</p> <p>8 A. Right.</p> <p>9 Q. Do you recall that?</p> <p>10 And would you say that your profession is</p> <p>11 law enforcement?</p> <p>12 A. I would say -- I would say my vocation is</p> <p>13 law enforcement training and instructional design,</p> <p>14 and my advocacy would be in law enforcement</p> <p>15 consulting.</p> <p>16 Q. When was the last time that you were an</p> <p>17 active police officer?</p> <p>18 A. Last time I was sworn was 1978.</p> <p>19 Q. And where was that?</p> <p>20 A. Braintree, Massachusetts.</p> <p>21 Q. Are you a Patriots fan? Don't have to</p> <p>22 answer.</p> <p>23 A. You have to be up there. They'll string</p> <p>24 you up otherwise.</p> <p>25 Q. And currently where are you employed?</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. And the officer's approach would be the</p> <p>2 same because it's an agitated chaotic event</p> <p>3 regardless of whether at the end of the day it turns</p> <p>4 out it was bath salts or diabetes or something like</p> <p>5 that?</p> <p>6 A. Could be. Again, it's going to be event</p> <p>7 specific. And that's not to sound evasive, but most</p> <p>8 of our police departments in this country have under</p> <p>9 50 officers. So it's quite common for a single unit</p> <p>10 to go to these type of events. A single unit is</p> <p>11 going to handle things probably differently than</p> <p>12 somebody in a city that has multiple officers. A</p> <p>13 rural setting may be different than an urban setting</p> <p>14 in a house versus out of a house, whether the</p> <p>15 officer is being assaulted or not assaulted.</p> <p>16 I mean, there's a lot of variables there</p> <p>17 at play. The real focus is to identify that there</p> <p>18 is something going on here and then approach it</p> <p>19 based on training and policy and that type of thing.</p> <p>20 Q. Now, you agree that when assessing, you</p> <p>21 know, an officer's response to an agitated chaotic</p> <p>22 event, whether it turns out to be something later</p> <p>23 called excited delirium or later something called a</p> <p>24 mental health crisis, that the way to assess whether</p> <p>25 or not the officer actions were justified and</p>	<p style="text-align: right;">Page 28</p> <p>1 A. I'm employed by the Institute for the</p> <p>2 Prevention of In-Custody Deaths, which is a training</p> <p>3 firm. And I'm also in the consulting business, John</p> <p>4 G. Peters, Jr., &amp; Associates.</p> <p>5 Q. And so is your work here today part of</p> <p>6 your consulting business or with the institute?</p> <p>7 A. Consulting.</p> <p>8 Q. And what percentage of your income do you</p> <p>9 derive from consulting?</p> <p>10 A. Consulting probably about a third.</p> <p>11 Q. And is the other two-thirds from the</p> <p>12 institute -- we'll just call it the institute or the</p> <p>13 IP?</p> <p>14 A. IPICD.</p> <p>15 Q. IPICD?</p> <p>16 A. Yes.</p> <p>17 Q. Now, I know that I noticed in your CV</p> <p>18 there are a number of things that are currently</p> <p>19 listed, you know, to present as in you're still</p> <p>20 actively involved in them.</p> <p>21 Have you ever been retained as a</p> <p>22 consultant by TASER?</p> <p>23 A. Define consultant.</p> <p>24 Q. Have you --</p> <p>25 A. The only reason I ask that there's</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
29-32

<p style="text-align: right;">Page 29</p> <p>1 consulting and then there's expert witness work, and</p> <p>2 I -- sometimes those are different. I just want to</p> <p>3 make sure I understand what your question is.</p> <p>4 Q. Okay. So your expert witness work is</p> <p>5 different than your consulting work?</p> <p>6 A. Many times, yes.</p> <p>7 Q. Okay. How many times have you served as</p> <p>8 an expert witness for TASER?</p> <p>9 A. I served -- for TASER International,</p> <p>10 being hired directly by TASER International maybe</p> <p>11 once or twice. Generally it was through counsel</p> <p>12 representing TASER International.</p> <p>13 Q. Okay. How many times would it have been</p> <p>14 through counsel representing TASER International?</p> <p>15 A. This would be an estimate, maybe 20.</p> <p>16 Q. Were you ever employed by TASER</p> <p>17 International?</p> <p>18 A. No.</p> <p>19 Q. In the 20 or 22 times that you were</p> <p>20 retained to give opinions on behalf of TASER,</p> <p>21 whether directly or through counsel, how much income</p> <p>22 would you estimate that you derived from giving that</p> <p>23 testimony?</p> <p>24 A. Well, for the record, I don't charge for</p> <p>25 my testimony, I charge for time. And it would vary.</p>	<p style="text-align: right;">Page 31</p> <p>1 A. I was a warnings expert on products</p> <p>2 warnings.</p> <p>3 Q. Okay. So articles that you've previously</p> <p>4 written about electronic control devices and dangers</p> <p>5 and how they should be used, have you -- do you have</p> <p>6 different opinions now than you had say in 2006 or</p> <p>7 2007?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And what was the -- what caused</p> <p>10 those opinions to change?</p> <p>11 A. I think scientific research in part. I</p> <p>12 think there were some studies that came out</p> <p>13 initially that suggested potential medical issues</p> <p>14 with the device and then later there were some other</p> <p>15 studies that came out. I think as the use of the</p> <p>16 device matured, we learned a lot from the evidence</p> <p>17 based practices that were out there, and I think</p> <p>18 that certainly has changed the industry.</p> <p>19 And then there were other input such as</p> <p>20 the police executive research firm, and I think -- I</p> <p>21 think when the industry goes from say 2005 in</p> <p>22 warnings where there was no scientific evidence or</p> <p>23 suggestion that the device could be harmful, I mean</p> <p>24 other than shooting in the eyes or something like</p> <p>25 that, until 2009 when the target zone was changed</p>
<p style="text-align: right;">Page 30</p> <p>1 I use a flat rate. Sometimes the flat rate varied</p> <p>2 because counsel would say, you know, the file is</p> <p>3 only an inch thick or what have you. And that was</p> <p>4 over a period of about five or six years. I</p> <p>5 probably have to go back and look. I'm not even</p> <p>6 sure I could estimate it.</p> <p>7 Q. Okay. More or less than a hundred</p> <p>8 thousand dollars?</p> <p>9 A. Might be right around it. I'm just not</p> <p>10 sure because deposition opposing parties pay your</p> <p>11 deposition fee and I don't -- I don't recall ever</p> <p>12 going to trial on those cases.</p> <p>13 Q. Okay.</p> <p>14 A. So I just don't know.</p> <p>15 Q. Okay. So is it fair to say that you're a</p> <p>16 defender of law enforcement officers using Tasers</p> <p>17 and electronic controlled devices?</p> <p>18 A. No, not at all.</p> <p>19 Q. Okay.</p> <p>20 A. I've testified several times on the</p> <p>21 plaintiff side on what I consider abuse of the</p> <p>22 device. My work that I had done with -- or in</p> <p>23 association with TASER's attorneys was 99 percent</p> <p>24 warnings, it had nothing to do with force.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 32</p> <p>1 and then we get to 2013 and then warnings have</p> <p>2 changed to now where it could cause cardiac arrest</p> <p>3 in some people. I think that science changed just</p> <p>4 like the science changes in the medical field.</p> <p>5 Q. Okay. On page 15 of your report, and in</p> <p>6 your report itself, you cite 2006 paperwork that you</p> <p>7 wrote, sudden death, excited delirium and issues of</p> <p>8 force part 2, and do you see that reference on top</p> <p>9 of page 15?</p> <p>10 A. Top of page 15?</p> <p>11 Q. It's the first line, sir.</p> <p>12 A. First line says WCRP, so your 15 must be</p> <p>13 different than my 15. Of the report or the CV?</p> <p>14 Q. Of the report.</p> <p>15 A. I'm sorry. That's why we -- there we go.</p> <p>16 Q. Right here, sir.</p> <p>17 A. Oh, on 15. Sorry.</p> <p>18 Q. You cited this article in your report in</p> <p>19 this case, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And do you still hold the opinions</p> <p>22 expressed in this article which you cited in the</p> <p>23 report in this case?</p> <p>24 A. For the most part. I mean, there's been</p> <p>25 some change obviously because this report is a</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016

33-36

<p style="text-align: right;">Page 33</p> <p>1 decade old, or this article is a decade old, so</p> <p>2 there's been changes to it since then.</p> <p>3 Q. Well, you cited it in this report which</p> <p>4 you prepared in 2016, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And is there anywhere in the report where</p> <p>7 you mention that some of the opinions expressed in</p> <p>8 that 2006 article you no longer hold?</p> <p>9 A. No.</p> <p>10 Q. Okay. And what are the opinions, if you</p> <p>11 can recall, from that article which you think are no</p> <p>12 longer applicable and which are the ones that still</p> <p>13 apply?</p> <p>14 A. I think the biggest change is this</p> <p>15 article focused on excited delirium. Today we call</p> <p>16 it agitated chaotic events which excited delirium</p> <p>17 may be a part of that. So the umbrella has greatly</p> <p>18 enlarged in that. And I don't recall this article</p> <p>19 in its totality while I'm sitting here, but if there</p> <p>20 was reference that the Tasers were totally safe or</p> <p>21 electronic control devices were totally safe in</p> <p>22 2006, that would have been true. In 2016 that would</p> <p>23 not have necessarily been applicable.</p> <p>24 Q. Okay. So other than now believing that</p> <p>25 Tasers are less safe than you previously thought</p>	<p style="text-align: right;">Page 35</p> <p>1 remained the same.</p> <p>2 Q. Okay. And do you recall the five part</p> <p>3 series of which this is part 2 of the article we've</p> <p>4 been referring to at the top of page 15 in the</p> <p>5 references of your report?</p> <p>6 A. I remember some of it. I think part 5</p> <p>7 was on evidence. One of them was on evidence; one</p> <p>8 of them was on suicide; one of them was on excited</p> <p>9 delirium; one was on, I believe, electronic control</p> <p>10 devices; and I think one was maybe an overview.</p> <p>11 Q. Okay.</p> <p>12 A. Its been a while.</p> <p>13 Q. Sure.</p> <p>14 MR. OWENS: Why don't we mark this as</p> <p>15 Exhibit 215.</p> <p>16 (Whereupon, Exhibit 215 was</p> <p>17 marked for identification.)</p> <p>18 BY MR. OWENS:</p> <p>19 Q. Doctor, now this is the article that's</p> <p>20 referenced in your report, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And the --</p> <p>23 A. No, this is not the article referenced in</p> <p>24 my report. I'm sorry.</p> <p>25 Q. This is not it?</p>
<p style="text-align: right;">Page 34</p> <p>1 they were, do you have any different opinions about</p> <p>2 the use of Tasers in force incidents?</p> <p>3 MR. HALL: Objection to form.</p> <p>4 Go ahead.</p> <p>5 THE WITNESS: I'm not sure I can answer</p> <p>6 it the way you asked, in force incidents.</p> <p>7 Q. Sure. I guess what I want to know is, is</p> <p>8 that you've suggested that -- excuse me. Let me</p> <p>9 back up.</p> <p>10 You've testified here today that some of</p> <p>11 your opinions with respect to electronic control</p> <p>12 devices have changed over time, and it's my</p> <p>13 understanding that the change that you identified</p> <p>14 earlier in your testimony was that they are now --</p> <p>15 there are additional warnings and they are less safe</p> <p>16 than previously thought; is that correct?</p> <p>17 A. For some people they can be less safe.</p> <p>18 Q. Okay. And other than issues with respect</p> <p>19 to them being less safe, do you have any differences</p> <p>20 in opinion between 2006 and now about when or how</p> <p>21 Tasers or electronic control devices should be</p> <p>22 employed?</p> <p>23 A. No. I think that's pretty much</p> <p>24 consistent. Whether it was 2006 or 2016, I think</p> <p>25 the decision to deploy those have pretty much</p>	<p style="text-align: right;">Page 36</p> <p>1 A. No.</p> <p>2 Q. So if -- this is not it?</p> <p>3 A. I don't believe so. Let me look. It</p> <p>4 should have been.</p> <p>5 MR. HALL: Can we go off the record for a</p> <p>6 second.</p> <p>7 MR. OWENS: H'm-h'm.</p> <p>8 (A discussion was held off the record.)</p> <p>9 THE WITNESS: On page 5 of my report, it</p> <p>10 cites Peters 2006 in the second full paragraph at</p> <p>11 the end. That is making reference to the article</p> <p>12 that was on excited delirium.</p> <p>13 BY MR. OWENS:</p> <p>14 Q. Au-huh.</p> <p>15 A. This article that you gave me, which is</p> <p>16 Exhibit 215, is on electronic control devices.</p> <p>17 Q. So is this not --</p> <p>18 A. This would not be the same article, it</p> <p>19 would be the -- it may be the article.</p> <p>20 Q. So let's -- just going from the top of</p> <p>21 page 15 of your report, the articles from 2006, the</p> <p>22 citation, correct?</p> <p>23 A. Correct.</p> <p>24 Q. And it's sudden death, excited delirium,</p> <p>25 and issues of force; part 2, correct?</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
37-40

<p style="text-align: right;">Page 37</p> <p>1 A. Correct.</p> <p>2 Q. Exhibit 214 is sudden death, excited</p> <p>3 delirium, and issues of force, colon, part 2.</p> <p>4 A. It's Exhibit 215, not 214.</p> <p>5 Q. Excuse me. Exhibit 215. Thank you.</p> <p>6 Is that correct?</p> <p>7 A. That's correct. But at the end it's 22,</p> <p>8 and then in parentheses 2. And this is 22, 3.</p> <p>9 Q. Okay. So this is a different article?</p> <p>10 A. It would be a different article.</p> <p>11 Q. So this is not the article you cited in</p> <p>12 your report, sir?</p> <p>13 A. Well, there's a typo somewhere and it may</p> <p>14 be it should say part 3 or part 1. I'd have to see</p> <p>15 the article.</p> <p>16 Q. I just want to know whether this is what</p> <p>17 you were citing in your report or not?</p> <p>18 A. No.</p> <p>19 Q. So this is not?</p> <p>20 A. This is not.</p> <p>21 Q. So there is a different article?</p> <p>22 A. Correct.</p> <p>23 Q. That you wrote that you meant to cite</p> <p>24 that has the same title of this one, but you think</p> <p>25 there's a problem with the part?</p>	<p style="text-align: right;">Page 39</p> <p>1 expressed in this article different now or you</p> <p>2 walked away from any of them or changed over time?</p> <p>3 A. Well, for clarity in the record, I</p> <p>4 haven't expressed any opinions in this article.</p> <p>5 What I've written about were behavioral cues and</p> <p>6 physical characteristics and the steps that someone</p> <p>7 may be able to take. I wouldn't call these</p> <p>8 opinions, I would just call this information.</p> <p>9 Q. Okay.</p> <p>10 A. Versus the opinions in my report. I just</p> <p>11 don't want to get those confused.</p> <p>12 Q. Absolutely. So the information that you</p> <p>13 wrote in Police and Security News in this article,</p> <p>14 is all of this information that you hold to a degree</p> <p>15 of professional -- reasonable professional</p> <p>16 responsibility?</p> <p>17 MR. HALL: Objection to form and</p> <p>18 foundation.</p> <p>19 Go ahead.</p> <p>20 THE WITNESS: For the most part, yes. I</p> <p>21 think the addition to this would be possibly the use</p> <p>22 of the carotid restraint as a suggested capturing in</p> <p>23 controlling.</p> <p>24 BY MR. OWENS:</p> <p>25 Q. Got it.</p>
<p style="text-align: right;">Page 38</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Could it be part 3?</p> <p>3 A. If you have it, I'll be glad to look at</p> <p>4 them for you.</p> <p>5 Q. Here you go.</p> <p>6 MR. OWENS: We can mark this as</p> <p>7 Exhibit 216.</p> <p>8 THE WITNESS: It would be part 3.</p> <p>9 (Whereupon, Exhibit 216 was</p> <p>10 marked for identification.)</p> <p>11 THE WITNESS: Yeah, my apologies on this.</p> <p>12 It's part 3, not part 2.</p> <p>13 BY MR. OWENS:</p> <p>14 Q. Okay. So this should be part 3 --</p> <p>15 A. Correct.</p> <p>16 Q. -- for the record, and Exhibit 216 is the</p> <p>17 article which you cited in your report?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And the -- can you show me -- let</p> <p>20 me back up.</p> <p>21 You've referenced this article in your</p> <p>22 report, and were you referring to the entire article</p> <p>23 or just a portion of it?</p> <p>24 A. Just a portion of it.</p> <p>25 Q. Okay. And are any of the opinions you</p>	<p style="text-align: right;">Page 40</p> <p>1 When I asked that question, am I right</p> <p>2 that you thought I meant reasonable degree of</p> <p>3 professional certainty? I think I said professional</p> <p>4 responsibility.</p> <p>5 Did you understand me to say professional</p> <p>6 certainty?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Thank you.</p> <p>9 This article from 2006 discusses excited</p> <p>10 delirium and issues of force; is that right?</p> <p>11 A. Mostly excited delirium. Some</p> <p>12 suggestions on force, yes.</p> <p>13 Q. Okay. So, are any of the opinions or</p> <p>14 information contained in this writing inaccurate?</p> <p>15 A. Inaccurate to what period of time?</p> <p>16 Q. Do you believe that they're inaccurate</p> <p>17 now?</p> <p>18 A. Inaccurate, I wouldn't use that term. In</p> <p>19 the Fourth Circuit based on the Armstrong case, we</p> <p>20 wouldn't start out capturing and controlling people</p> <p>21 maybe in this way, in 2016. In 2006, in the context</p> <p>22 within which this was written, it was accurate.</p> <p>23 Q. Okay.</p> <p>24 A. But because of the changes in some of the</p> <p>25 circuit courts and some of the training</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
41-44

<p style="text-align: right;">Page 41</p> <p>1 methodologies that have taken place over the last 2 decade, the behavioral cues are the same, not making 3 a diagnosis is the same, but the approach by the 4 officers may have changed depending on the circuit, 5 depending on the training and depending on the 6 device. Because we've had several new TASER devices 7 with several new platforms come out since then and 8 we've had some devices that have gone away. 9 Q. Okay. 10 A. So to say this was inaccurate, no, it was 11 accurate at the time it was written. Have things 12 changed, yes. 13 Q. Okay. And can you just be a little bit 14 more specific for me. What aspects of this -- and 15 you can highlight them in the exhibit if you'd 16 like -- have changed? 17 A. Well, starting with page 1 of the article 18 of Exhibit 216, probably -- it's mostly a 19 hypothetical. Page 2, as described in the 20 hypothetical, that was a medical emergency or could 21 be considered a medical emergency, and then we have 22 some predisposing factors. The predisposing factors 23 are pretty much the same today as they were in 2006. 24 The physical characteristics pretty much the same. 25 The behavioral cues on page 3, basically</p>	<p style="text-align: right;">Page 43</p> <p>1 opinions that you're offering in this case about the 2 work done by Mr. Prenz, whose report I know you 3 read, but you're not offering any expert opinions 4 about whether he was right or wrong, correct? 5 A. Correct. 6 Q. And you're not offering any opinions 7 about David McKay's work or report in this case, 8 correct? 9 A. Correct. 10 Q. And you're not offering any opinions 11 about Jonathan Arden's work or report in this case, 12 correct? 13 A. Correct. 14 Q. And you're not offering any opinions 15 about Special Agent Flessert's synchronization of 16 the audio and the video, correct? 17 A. Correct. 18 Q. You're not offering any opinions about 19 the quality of the autopsy or trajectories found in 20 Dr. Tranchida's examination and report, correct? 21 A. Correct. 22 Q. You're not offering any opinions on the 23 adequacy of the City of Madison's policy or 24 training, correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 42</p> <p>1 the same. Not making the diagnosis would be the 2 same. The action steps using a Taser or pepper 3 spray may or may not be the first choice today, 4 depending on the situation. Sedation we still 5 recommend. Everything else is pretty much I would 6 say the same. 7 Q. Okay. So we -- I asked you a few 8 questions earlier about the scope of your opinions, 9 and you -- we talked about you don't have any new 10 opinions, correct? 11 A. Correct. 12 Q. And so you don't have any opinions about 13 the City of Madison's investigation into the 14 shooting of Tony Robinson by Officer Kenny? 15 A. I wasn't asked to do anything on -- on 16 the City side, so I did not look at that. 17 Q. You don't have any opinions about the 18 Department of Criminal Investigation's investigation 19 of the shooting, correct? 20 A. Other than they did one, no. 21 Q. Right. And you don't have any 22 professional opinions about whether or not they did 23 a good job or a bad job, right? 24 A. Wasn't asked to review that. 25 Q. Okay. And you don't have any expert</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. And you're not offering any opinions 2 about the sequencing or ordering of the gunshots, 3 wounds or anything like that, correct? 4 A. Correct. 5 Q. And you're not offering any opinions 6 about where in the stairwell the shots were fired; 7 is that right? 8 A. Other than what was referenced in my 9 summary of facts. 10 Q. So your summary of facts is an opinion 11 about where the shooting happened? 12 A. No, it's just a description of what 13 various people have said. 14 Q. Got it. But you're not offering any 15 expert opinions about where the shooting happened, 16 correct? 17 A. Correct. I wasn't there. 18 Q. Okay. And you're not being asked to 19 opine about where the shooting happened, right? 20 A. Right. I wasn't there. 21 Q. And there's nothing in your report that 22 says, Well, I think it happened at the top of the 23 stairs, bottom of the stairs, middle of the stairs 24 or anything like that, right? 25 A. No.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
45-48

<p style="text-align: right;">Page 45</p> <p>1 Q. How many times have you spoken with 2 Officer Matt Kenny? 3 A. None. 4 Q. Have you ever met him personally? 5 A. No. 6 Q. Do you know him personally at all? 7 A. No. 8 Q. Did you ever have any conversations with 9 Officer Kenny about what he discussed with his 10 attorneys before he gave his interview to 11 investigators? 12 A. I never met Officer Kenny, so the answer 13 would be no. 14 MR. HALL: Object to form. 15 BY MR. OWENS: 16 Q. Right. I just got to make my record. 17 A. I understand. 18 Q. Did you ever have any conversations with 19 Officer Kenny about what he discussed with his 20 attorney before, during or after the walkthrough of 21 the scene? 22 MR. HALL: Object to form. 23 THE WITNESS: No. 24 MR. OWENS: What is the problem with the 25 form?</p>	<p style="text-align: right;">Page 47</p> <p>1 A. I know of him. I don't know if we've 2 ever met or if we did, maybe once. 3 Q. Okay. And how do you know of him? 4 A. He's been in other cases over the years 5 that I've been retained in Wisconsin. 6 Q. Do you recall how many times? 7 A. Very few. I wouldn't even give an 8 estimate, but I would -- I would probably say under 9 five. 10 Q. And I have to ask, can you remember any 11 of the specific cases? 12 A. That, I don't. 13 Q. Okay. 14 A. Just over the years. 15 Q. So in those very few less than five 16 cases, were your opinions always opposing 17 Mr. Waller's? 18 A. Yes. 19 Q. Okay. Now, I know there's some 20 criticisms you've made of Mr. Waller, were there any 21 opinions that he gave in those other cases that you 22 agree with? 23 A. I would have to go back and read his 24 opinions in those cases. I couldn't tell you. 25 Q. Okay. Are there any opinions in this</p>
<p style="text-align: right;">Page 46</p> <p>1 MR. HALL: He just said he's never talked 2 to Officer Kenny. 3 MR. OWENS: So why isn't the answer just 4 no? 5 MR. HALL: Well, it's a repetitive 6 question. In my mind, it's an attempt to harass the 7 witness. If he said he's never talked to him, you 8 can ask him about an infinite number of things that 9 he may have asked or not asked. But if he's never 10 spoke to him, we all know the answer to those 11 questions. 12 MR. OWENS: Okay. So the objection is 13 form and the basis is that it's harassment and 14 argumentative? 15 MR. HALL: I just stated the objection. 16 BY MR. OWENS: 17 Q. Have you ever talked to any Madison 18 police department officers about this shooting 19 incident? 20 A. No. 21 Q. Did you ever talk to any of the 22 Department of Criminal Investigation's agents about 23 the shooting? 24 A. No. 25 Q. Do you know Denny Waller?</p>	<p style="text-align: right;">Page 48</p> <p>1 case that he gave that you agree with? 2 A. Again, I would have to read his report. 3 I cited the ones I certainly didn't agree with. 4 Q. Okay. 5 A. And I think he opined in areas that I 6 wasn't asked to review. So if he opined in those, I 7 didn't worry about them. 8 Q. Right. So you don't have any new 9 opinions about areas that were brought on the things 10 that you reviewed? 11 A. I focussed on what I was asked to do. 12 Q. And nothing in your mind sticks out right 13 now about things that you agree with him about; is 14 that right? 15 A. Well, the implication is that I do agree 16 with him, and I can't answer that. I would have to 17 look at each one of his opinions. And as I said, 18 some of those I think went to Monell issues that I 19 wasn't asked to deal with. 20 Q. So do you have -- so there is some 21 criticisms you made of Mr. Waller in your report, 22 are they personal disagreements or are they just 23 sort of you think he got the analysis wrong? 24 A. It's just professional. There's nothing 25 personal here.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
49-52

<p style="text-align: right;">Page 49</p> <p>1 Q. It's not like you don't respect him as a 2 law enforcement officer or expert, you just disagree 3 with the opinions you reached here to the extent you 4 have identified them in your report? 5 A. First of all, I don't know -- I didn't 6 know Mr. Waller when he was a police officer, so I 7 really have no way to form any opinion about that. 8 Q. Sure. 9 A. He put down what he thinks is his 10 opinion, and I disagreed with it and cited the 11 reasons why. So. 12 Q. Okay. 13 A. Strictly professional. There's nothing 14 personal involved in this. 15 Q. Okay. As regards to Officer Kenny's 16 conduct, are there any opinions that you disagree 17 with that are not -- of Mr. Waller's that are not 18 described in your report? 19 (Interruption on phone.) 20 MR. SWAMINATHAN: I'm sorry, Kate, did 21 you say something? 22 MR. HALL: Can we go off the record for 23 one second. 24 (A discussion was held off the record.) 25 THE WITNESS: I think my report speaks</p>	<p style="text-align: right;">Page 51</p> <p>1 A. In research there's two categories of 2 research. There are quantitative and qualitative. 3 And the qualitative side of research is this 4 research category called phenomenology. And 5 phenomenology simply means lived experience. So if 6 I wrote about our deposition today, that would be 7 considered a phenomenological report because I lived 8 it, you could write about it, you lived it, so that 9 goes to the issue of police report. 10 Q. Okay. So that's sort of like your 11 interpretation of phenomenology. I mean, again are 12 you drawing on Heidegger, Sartre, Searle, like, 13 philosophers in the tradition of phenomenology or 14 are you just meaning it in the sense in which you 15 described? 16 A. First of all, philosophers -- well, let 17 me back up. I taught research methods for five 18 years. 19 Q. Sure. 20 A. I understand research pretty well. I 21 taught statistics for that long and longer. Basic, 22 advanced and intermediate. We're not talking 23 necessarily about Heidegger or Popper or any of the 24 great philosophers. What we're talking about is 25 categories of research.</p>
<p style="text-align: right;">Page 50</p> <p>1 for itself. 2 BY MR. OWENS: 3 Q. Got it. 4 So as concerns Officer Kenny's conduct 5 specifically, the disagreements you have with 6 Mr. Waller are contained in your report; is that 7 correct? 8 A. Correct. 9 Q. Okay. Now, I asked you a moment ago a 10 number of questions about whether you personally 11 interviewed or spoke with individuals involved in 12 this case. 13 A. Correct. 14 Q. And you did not, correct? 15 A. Correct. 16 Q. And now am I right that that's consistent 17 with your methodology here what you described as 18 archival research? 19 A. That would be consistent with that, yes. 20 Q. Now, I just had a question. You 21 mentioned phenomenology as part of the methodology, 22 how does that play a role in this report? 23 A. Phenomenology means lived experience. 24 Police reports are lived experiences. 25 Q. So -- sorry.</p>	<p style="text-align: right;">Page 52</p> <p>1 Same as quantitative research versus 2 qualitative research. It's just a category under 3 that big umbrella, so that's where it comes from. 4 The philosophical underpinning and the 5 interpretations, I don't point to a particular 6 philosopher, I point to the categories. And 7 phenomenology is one of those categories. 8 Q. So I'm just, you know, in terms of I'm 9 just -- so where I'm coming from so maybe we can get 10 on the same pages is, I'm trying to understand your 11 methodology. I'm looking at page 3 of your report. 12 A. Right. 13 Q. And you discuss archival records and 14 doing that type of research. And then you say above 15 that these research methods -- methodologies may 16 have included historiography, content analysis, 17 phenomenology, ethnography, disclosure analysis and 18 case study. 19 A. Correct. 20 Q. And I'm trying to figure out where in 21 those -- each one of those plays a part or whether 22 or not some of them don't play a part at all because 23 I'm not sure how each of them influences your 24 opinions here. 25 A. Okay. That's fair. I guess the best way</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
53-56

<p style="text-align: right;">Page 53</p> <p>1 to describe that is starting with Dalbert. I think 2 we're probably all familiar with the Supreme Court 3 case on Dalbert and the criteria for Dalbert and we 4 try to rely on a scientific methodology in our 5 approach. So a case study as defined by Yang and 6 others is basically defined in time. 7 There is a boundary. This incident 8 involving Mr. Robinson is a case study. It started 9 and it stopped. It's bounded in time. It's bounded 10 in space. It meets the definition of a case study. 11 Just like if you went to the business school and you 12 studied a case about that company, it's bounded in 13 time. It took place between April 1st and 14 April 30th. So that's where case study comes in. 15 So part of the analysis from a research 16 point of view is that this is a separate case study 17 meeting all the criteria of a case study and 18 research. 19 Q. Okay. 20 A. When it comes to historiography, we're 21 looking back in time because this happened before 22 any of us got involved in the incident. So it's a 23 historical event by definition. 24 Discourse analysis focuses on what was 25 said and that would apply to depositions, that may</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. Okay. So case study -- I just want to be 2 clear about that answer, I appreciate it -- involves 3 examining just this case. Are we doing an 4 examination of this particular event and not doing 5 some type of comparative analysis across all events 6 or a sample event or something like that? 7 Do I understand that correctly? 8 A. In part. You look at this event -- you 9 look at this situation as a separate case study. 10 That does not preclude anyone from doing a 11 comparative analysis. But by definition the case 12 study is the case. These are the facts that go with 13 this case. So when I read all the depositions and 14 the investigative reports and Officer Kenny's 15 statements and the training records, autopsy 16 reports, that applies to this case. Period. 17 Now, there's nothing in the definition of 18 a case study that puts up walls that say okay, I 19 looked at this, I can't reach over here and compare 20 it to something. But the facts, if we're looking at 21 just understanding the facts, it's to this case 22 study. 23 Q. Okay. And to -- you know, when we're 24 looking at the facts of this case and connecting a 25 case study here, that doesn't require any</p>
<p style="text-align: right;">Page 54</p> <p>1 apply to interviews. So discourse analysis is where 2 you look at and analyze what was said and compare 3 and contrast it to other persons or other people or 4 other viewpoints, that type of thing. 5 Archival records that you mentioned 6 earlier is not a research methodology. What that 7 archival records refer to is that under research 8 definition, records such as this that we looked at 9 are considered archival records because they're 10 already in place. 11 For example, Officer Kenny's training 12 records, they're archival records. They're kept, 13 they're historical. So these move in and out 14 depending on what's being reviewed and it forms a 15 scientific basis, even in some cases a qualitative 16 versus a quantitative research basis, which I use to 17 form that basis that Dalbert talks about. 18 So I try to start from a research 19 perspective. I try to pull in, for example, police 20 reports from a phenomenological perspective because 21 they meet the definition of that. So all of the 22 methodologies that I've cited are legitimate 23 consistent research methodologies that are taught 24 to, generally, graduate students or people doing 25 research.</p>	<p style="text-align: right;">Page 56</p> <p>1 specialized training or skill, that requires just 2 looking at the facts of this case, right? 3 MR. HALL: Objection to form. 4 Go ahead. 5 THE WITNESS: Well, if it didn't require 6 a skill or special training you wouldn't have asked 7 me the last three questions. 8 BY MR. OWENS: 9 Q. So is that a yes or a no? 10 A. Yeah, it does require training. It does 11 require training and case analysis. 12 Q. Okay. Now, the discourse analysis, I 13 think you mentioned was reading prior statements 14 from individuals? 15 A. It could be statements, it could be 16 deposition testimony, any discourse, any 17 communication that was interactive. 18 Q. Okay. Are there any additional steps 19 beyond the sort of reading the prior discourse that 20 that involves? 21 A. Well, discourse analysis would involve 22 looking at what was said and comparing and 23 contrasting it to other statements that have been 24 made as well. So you're looking at that analysis. 25 You're looking at okay, let's say Witness A said the</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
57-60

<p style="text-align: right;">Page 57</p> <p>1 tree was green, Witness B said the tree was yellow, 2 and Witness C said it was purple. Well, you're 3 going to have to analyze that, identify what that is 4 and then possibly reach out and either through 5 triangulation or some other methodology come up 6 with, you know, what color was the tree. 7 You may find out as you go through that 8 that Witness A was colorblind and Witness B, the sun 9 was shining in a particular way. That's part of 10 that analysis. You look at what was said and you 11 look for inconsistencies or consistencies or 12 absences where somebody doesn't have a piece of the 13 information. 14 In other words, they showed up but nobody 15 ever asked them where were you coming from. And 16 that may not be important either, that's part of 17 that analysis. 18 Q. Okay. So discourse analysis involves 19 comparing statements between, you know, individuals. 20 Can it also involve comparing or looking for 21 inconsistencies or consistencies between multiple 22 statements by the same individual? 23 A. Sure, that's all part of discourse 24 analysis. 25 Q. Okay. And is part of discourse analysis</p>	<p style="text-align: right;">Page 59</p> <p>1 I don't have a background in that. I stick to what 2 my background is. 3 Q. Okay. And in this case, I'm right that 4 you didn't review the deposition or any deposition 5 testimony of Edward Greengrass, correct? 6 A. Yes. 7 Q. Or Kathleen Bufton; is that right? 8 A. Correct. 9 Q. Okay. Now, am I -- I'm just trying to 10 understand from a methodological place where the 11 comparison comes in to, you know, statements and I 12 think what you referred to objective evidence? 13 A. The discourse analysis is where you read 14 everything. I don't make credibility assessments, 15 that's up to the trier of fact. If somebody says "I 16 don't think that that is correct," somebody else is 17 going to make that determination. What I'm looking 18 at is okay, here's what's been said about this 19 incident. This is what the officer said, here's 20 what the witnesses have said, here's what the 21 investigation -- or the investigators have pulled 22 together. 23 And I look at that and I do compare and 24 contrast that to see if it comports. And in some 25 respects it can be as simple as there's a dispatch</p>
<p style="text-align: right;">Page 58</p> <p>1 also comparing statements of witnesses or 2 individuals with other evidence like forensic 3 evidence? 4 A. You look at the statements made and you 5 could compare it to objective or scientific 6 evidence. And you would do that, at some point you 7 would do that whether that would be exclusive part 8 of discourse analysis or that would just be part of 9 the analysis overall. Yes, you would do that. 10 Q. And that's really my question. Where 11 does that type of comparison come into your 12 methodology? 13 A. I think it comes in after you've done 14 most of this. I mean, you look at the archival 15 information. We have quite a bit of quantitative 16 data in this case. I didn't do the measurements. I 17 don't do autopsies obviously. Toxicology 18 information is something I don't do, but I can read 19 what the results are. So there's some comparison 20 that's done there and all that is in the form of 21 written word for the most part. 22 Now, what I don't do and you asked it 23 earlier, you know, trajectories and that -- that's 24 outside my box, I don't do that. So that part of 25 the analysis, I may or may not even consider because</p>	<p style="text-align: right;">Page 60</p> <p>1 call to go to a certain location. We know that that 2 happened and at the end we had the shooting. So 3 there are some things that -- 4 Q. So -- 5 A. You don't really need to compare very 6 much. 7 Q. Sure. How do you, in your methodology, 8 resolve discrepancies between different witness 9 accounts? 10 A. Generally, I try to incorporate those in 11 my report and say, you know, Witness A said this, 12 but in contrast Witness B said this. Or, you know, 13 Mr. Limon, for example, may have said this, where 14 his girlfriend said that. I will identify those. 15 And in some cases if Mr. Limon, for 16 example, didn't know about or didn't see 17 Mr. Robinson pulled his girlfriend in and tried to 18 grab her or do something, I may note that, but in 19 the overall analysis it may or may not be an 20 important issue. 21 Q. Okay. In your report here, did you note 22 any conflicting witness accounts between or versions 23 of events between that which Kenny gave and other 24 witnesses? 25 A. There may be a couple, but I don't think</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
61-64

<p style="text-align: right;">Page 61</p> <p>1 there were a lot because I was primarily asked about</p> <p>2 Officer Kenny, issues on policy, issues on training,</p> <p>3 that type of thing. I didn't get into.</p> <p>4 Q. Let me back up.</p> <p>5 So are there any places in your report</p> <p>6 where you identify something a witness has said that</p> <p>7 would contrast or even conflict with Officer Kenny's</p> <p>8 reporting of the events?</p> <p>9 A. Just let me take a moment.</p> <p>10 Q. Absolutely.</p> <p>11 A. Well, I guess there's been some</p> <p>12 discussion in the record about this excited delirium</p> <p>13 possibility being thought of by different officers</p> <p>14 and what have you. I looked at that, obviously. I</p> <p>15 don't know if I gave specific reference to, you</p> <p>16 know, a couple of people may have thought in terms</p> <p>17 of it may have been or may not have been. But most</p> <p>18 of my opinions have focused on Officer Kenny's</p> <p>19 behavior, specifically his behavior and also on what</p> <p>20 Mr. Waller talked about.</p> <p>21 Most of officers -- Officer Kenny's</p> <p>22 behavior occurred in what I would categorize as an</p> <p>23 isolation. There was no one else with him except</p> <p>24 Mr. Robinson; therefore, when you look at the grand</p> <p>25 scheme of things, most of the discussion that was</p>	<p style="text-align: right;">Page 63</p> <p>1 buttons came off, that would be objective evidence,</p> <p>2 something happened to your shirt. That would be how</p> <p>3 I would use it. As far as the trajectories or the</p> <p>4 autopsy or that type of thing, that would be</p> <p>5 objective evidence but that would be for somebody</p> <p>6 else's field, not mine.</p> <p>7 Q. Okay. And you didn't note any type of</p> <p>8 discrepancies between the objective evidence and</p> <p>9 Officer Kenny's account; is that right?</p> <p>10 A. I think the only thing I noted was some</p> <p>11 second. Mr. Waller talked about seconds of his</p> <p>12 interpretation and then my seconds that I came up</p> <p>13 with. I think that was basically about it.</p> <p>14 Q. Right. But there you were disagreeing</p> <p>15 with Mr. Waller's interpretation. What I'm asking</p> <p>16 is different is, are there any instances where you</p> <p>17 identified a disagreement between Officer Kenny's</p> <p>18 account and any of the other evidence?</p> <p>19 A. Again, I would have to refer back to what</p> <p>20 I just said because you framed it that I disagree</p> <p>21 with Mr. Waller. Take Mr. Waller out of the</p> <p>22 equation for just a moment.</p> <p>23 Q. Sure.</p> <p>24 A. He said seconds over here and I have a</p> <p>25 different amount of seconds, to me that is objective</p>
<p style="text-align: right;">Page 62</p> <p>1 made and where a lot of the discrepancies were in</p> <p>2 that reporting took place prior to Officer Kenny's</p> <p>3 arrival on the scene.</p> <p>4 Mr. Limon may have said one thing and</p> <p>5 somebody else may have said something else. But as</p> <p>6 far as going into the building and describing what</p> <p>7 took place, basically Officer Kenny was the only</p> <p>8 person who could describe that because no one else</p> <p>9 was there.</p> <p>10 Q. Okay. So am I right that there's no</p> <p>11 place in your report where you identify any possible</p> <p>12 discrepancy between what Officer Kenny said and what</p> <p>13 another witness said?</p> <p>14 A. That would probably be a fair statement.</p> <p>15 Q. Okay. Now, am I right that there is no</p> <p>16 place in your report where you identify any</p> <p>17 discrepancy between anything Officer Kenny said and</p> <p>18 any other objective evidence?</p> <p>19 A. Objective evidence is pretty broad.</p> <p>20 Q. Do you recall using the term earlier?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. What did you mean by it, then?</p> <p>23 A. Well, objective evidence would be</p> <p>24 something, for example, if say you and I got into a</p> <p>25 confrontation and I ripped your shirt and your</p>	<p style="text-align: right;">Page 64</p> <p>1 evidence. Seconds are seconds looking at the video.</p> <p>2 Now, I don't know anything really about syncing</p> <p>3 video or anything else, I'm just going by what I</p> <p>4 saw.</p> <p>5 Q. Sure.</p> <p>6 A. So I have a difference of seconds than he</p> <p>7 does.</p> <p>8 Q. Right.</p> <p>9 A. It has nothing to necessarily do with</p> <p>10 anything but just numbers.</p> <p>11 Q. Absolutely. Putting all of that to the</p> <p>12 side, I'm just focused on -- maybe we're talking</p> <p>13 past each other. I'm focused on a different moment</p> <p>14 or a different type of inconsistency.</p> <p>15 Am I right that there's no point in your</p> <p>16 report in which you identify any inconsistency</p> <p>17 between the account Officer Kenny gave and any other</p> <p>18 evidence?</p> <p>19 A. Let me just look. I would say that's</p> <p>20 correct.</p> <p>21 Q. Okay. And I want to actually want to</p> <p>22 make sure I understand sort of the structure of your</p> <p>23 report, and I meant to cover this earlier. And I</p> <p>24 want to understand the relationship between your</p> <p>25 report itself and the opinion you gave and the</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
65-68

<p style="text-align: right;">Page 65</p> <p>1 summary of facts.</p> <p>2 Am I correct in the summary of facts that</p> <p>3 you're not saying that those are part of your</p> <p>4 opinions, but those sort of form the basis for your</p> <p>5 opinions; is that right?</p> <p>6 A. I would say it as they're not -- my</p> <p>7 summary of facts isn't necessarily a hundred percent</p> <p>8 complete. And I gave that and my disclaimer at the</p> <p>9 front of that. It's basically my understanding in</p> <p>10 summary form of what took place.</p> <p>11 Q. And do you have the disclaimer that your</p> <p>12 statement of facts is not intended as nor should it</p> <p>13 be considered as a complete or accurate statement of</p> <p>14 the actual occurrence, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And you would agree with me that facts</p> <p>17 unknown to Officer Kenny are not irrelevant to</p> <p>18 analysis of his use of force, correct?</p> <p>19 A. Say that again.</p> <p>20 Q. Sorry. I throw a lot of double</p> <p>21 negatives.</p> <p>22 You would agree with me that the only</p> <p>23 relative facts to analyzing offer Kenny's use of</p> <p>24 force are the facts that he actually knew at the</p> <p>25 time?</p>	<p style="text-align: right;">Page 67</p> <p>1 information on Officer Kenny's computer notes would</p> <p>2 have been information that he would have had as</p> <p>3 well?</p> <p>4 A. Yes.</p> <p>5 Q. And then it would have been important for</p> <p>6 Officer Kenny to look at that information before</p> <p>7 engaging the suspect?</p> <p>8 A. If he had time and if it was appropriate.</p> <p>9 Q. So is there anything that you saw in your</p> <p>10 analysis that indicated it would have been not</p> <p>11 appropriate for Officer Kenny to review the notes on</p> <p>12 his computer in this situation?</p> <p>13 A. Well, if he's driving and he's responding</p> <p>14 Code 3 to a situation, it may be difficult to read</p> <p>15 and drive at the same time.</p> <p>16 Q. Sure.</p> <p>17 A. And when he arrived, my recollection is</p> <p>18 that he was told, you know, the guy is over there,</p> <p>19 and he had the information from dispatch.</p> <p>20 Q. Okay. So he should have -- you know,</p> <p>21 while he's driving it's more reasonable for him to</p> <p>22 be focusing on the information that's being reported</p> <p>23 to him over the radio so he's not looking down at</p> <p>24 the camera -- or the computer, excuse me?</p> <p>25 A. Yeah. I don't know what kind of MDT they</p>
<p style="text-align: right;">Page 66</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So let's look in -- this is</p> <p>3 Appendix A, page 16 of your report.</p> <p>4 A. Okay.</p> <p>5 Q. Okay. So you would agree with me that</p> <p>6 the information, the evidence base history of</p> <p>7 Mr. Robinson that the information that Officer Kenny</p> <p>8 knew about Tony Robinson, that he was biracial and</p> <p>9 19 years of age, is the only information Officer</p> <p>10 Kenny knew before this incident; is that right?</p> <p>11 A. I would say he would know approximately</p> <p>12 his height and he may know he was biracial. Whether</p> <p>13 he knew he was 19, I'm not sure.</p> <p>14 Q. And you would agree that the universe of</p> <p>15 information Officer Kenny had before he arrived at</p> <p>16 the scene was that from dispatch, right?</p> <p>17 A. Correct.</p> <p>18 Q. And it's important for Officer Kenny to</p> <p>19 carefully listen to dispatch, right?</p> <p>20 A. I would agree with that.</p> <p>21 Q. You have given presentations before where</p> <p>22 you have indicated that, right?</p> <p>23 A. Yeah.</p> <p>24 Q. And you would agree that it would have</p> <p>25 been important in addition to dispatch on the radio,</p>	<p style="text-align: right;">Page 68</p> <p>1 have in the cars. Some cars have larger screens,</p> <p>2 some have smaller screens.</p> <p>3 Q. Yeah.</p> <p>4 A. But I think safety of the public and the</p> <p>5 officer himself are paramount over reading the</p> <p>6 screen while you're driving.</p> <p>7 Q. Sure. And you would agree, from a</p> <p>8 general proposition, an officer should pay attention</p> <p>9 and observe the information given to him about a</p> <p>10 situation as he's arriving?</p> <p>11 A. If he has the time to do that, sure.</p> <p>12 Q. Okay. Now let's go to the Appendix A,</p> <p>13 March 6th, 2015, do you see the 3 p.m.?</p> <p>14 A. Yes.</p> <p>15 Q. Now, you will agree with me the</p> <p>16 information under that headline is not relevant to</p> <p>17 Officer Kenny's use of force, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Cuddling in the bedroom, also not</p> <p>20 relevant to Officer Kenny's use of force, correct?</p> <p>21 A. Correct.</p> <p>22 Q. 4 p.m., Robinson lying on the bed in</p> <p>23 another room, also not relevant to Officer Kenny's</p> <p>24 use of force, correct?</p> <p>25 A. Correct.</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
69-72

<p style="text-align: right;">Page 69</p> <p>1 Q. Same thing with Mr. Robinson began 2 shouting? 3 A. Correct. 4 Q. Same thing with -- now we're on to page 5 17, all of the information on page 17, correct? 6 A. Correct. 7 MR. SWAMINATHAN: You want to go off the 8 record? 9 MR. OWENS: No, I'm fine. I'm back. I'm 10 back. 11 BY MR. OWENS: 12 Q. So the same is true with page 18, 13 correct? 14 A. I would agree. 15 Q. And then -- now on page 19, you'll agree 16 with the information of what the caller actually 17 told to the 911 operator is not relevant to Officer 18 Kenny's use of force because it wasn't communicated 19 to him directly, right? 20 A. Correct. 21 Q. It's just the information that he got 22 from the 911 folks or dispatch? 23 A. We got a slice that a little bit. What 24 Officer Kenny got from dispatch didn't necessarily 25 make his decision to use force. You're combining</p>	<p style="text-align: right;">Page 71</p> <p>1 Now, does this lay somewhat of a 2 generalized description of what the officer may 3 find, sure. But just like the two officers who were 4 killed in Palm Springs, they responded to a domestic 5 call and got ambushed, so I don't think the logic 6 holds true. 7 Q. Okay. So you think that officers should 8 pay attention to the information that they're given 9 via dispatch, correct? 10 A. Yes. 11 Q. And you would agree that that informs the 12 objective reasonableness of their actions and how 13 they view it without the benefit of hindsight, 14 correct? 15 MR. HALL: Objection to form. 16 THE WITNESS: Well, there's no -- I'm 17 sorry. There's no -- there's no hindsight and 18 there's no force used. There can't be objectively 19 reasonable force used, he's driving. All he's 20 getting is information, whether that information is 21 valid or not would happen at the scene. 22 BY MR. OWENS: 23 Q. You would agree, though, if Officer Kenny 24 or an officer is told that there's a suspect running 25 around wielding an assault rifle that that would</p>
<p style="text-align: right;">Page 70</p> <p>1 that. I want to separate that out a little bit 2 because the decision to use force at the time Kenny 3 used it is based on the facts and circumstances at 4 that moment in time, not based on a dispatch that 5 occurred five or ten minutes earlier. 6 So I just want to make that clear. Did 7 that information -- or was that information 8 provided? Yes, it was. 9 Q. But the background -- my point -- we 10 don't need to quibble. My point is, the only 11 information that's in the universe of things that 12 are relevant to the use of force is the information 13 that Officer Kenny was given, not things that he 14 didn't know, right? 15 A. I would agree that he didn't know any of 16 the other information we just said he didn't know. 17 Q. Right. But you would agree that dispatch 18 information is relevant to his analysis of his use 19 of force, right? 20 A. No. Dispatch gets it wrong. Dispatch 21 doesn't tell you everything all the time. What 22 dispatch does is tell you here's what we've been 23 told. What if the caller was wrong? When the 24 officer gets to the scene, the officer has to make 25 his or her own assessment.</p>	<p style="text-align: right;">Page 72</p> <p>1 affect his analysis in thinking about the use of 2 force as he encounters the situation, right? 3 A. That would affect the analysis on officer 4 safety. 5 Q. And it would be appropriate to look at 6 that dispatch information, right? 7 A. Sure. You would factor that into your 8 response from an officer safety viewpoint, not 9 necessarily a use of force viewpoint. I certainly 10 wouldn't use force based on a dispatch call. 11 Q. Sure. And my only point is that it's 12 relevant to the overall totality? 13 A. It's a variable that needs to be 14 considered. 15 Q. Okay. Now, the -- your summary of the 16 facts doesn't include any information about the 17 video, right? 18 A. I think that is probably correct. 19 Q. Is it fair to say that you didn't rely on 20 the video in reaching any -- the opinions you gave 21 here? 22 A. Well, let's not confuse apples and 23 oranges here. Okay. The summary of facts is the 24 summary of facts. That's not my opinion. I think I 25 did reference the video or photographs in the</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
73-76

<p style="text-align: right;">Page 73</p> <p>1 opinions.</p> <p>2 Q. Okay. Show me where in your opinions</p> <p>3 that you reference the video.</p> <p>4 A. Well, the time gap in seconds would</p> <p>5 certainly have relied in part on that.</p> <p>6 Q. When you're discussing Mr. Waller's</p> <p>7 testimony?</p> <p>8 A. Right.</p> <p>9 Q. Okay. Aside from that, tell me any other</p> <p>10 reference in which you reference the video or form a</p> <p>11 basis for your opinion.</p> <p>12 A. I don't think I referenced the video in</p> <p>13 the opinions mostly because what I discussed in the</p> <p>14 opinions isn't shown in the video.</p> <p>15 Q. Okay.</p> <p>16 MS. REPORTER: Is it all right if we take</p> <p>17 a break?</p> <p>18 MR. OWENS: Absolutely.</p> <p>19 (Lunch recess.)</p> <p>20 BY MR. OWENS:</p> <p>21 Q. We were discussing your summary of facts,</p> <p>22 and I just wanted to make sure I understood the</p> <p>23 summary of facts, and I think I have a good picture</p> <p>24 of that.</p> <p>25 One question I have is that the opinions</p>	<p style="text-align: right;">Page 75</p> <p>1 so I know in your report, is it fair to say that in</p> <p>2 the report itself, as opposed to the summary of</p> <p>3 facts, the facts that you mentioned are the ones</p> <p>4 that you found to be important?</p> <p>5 A. To that opinion, yes.</p> <p>6 Q. Yeah. And that it's not that other</p> <p>7 facts, you know, don't have anything to do with it,</p> <p>8 but they're more the background and the ones that</p> <p>9 were really the more specific things that you had in</p> <p>10 mind, are those the ones you included in your</p> <p>11 report?</p> <p>12 A. I think the facts that I've included in</p> <p>13 not every opinion but some of the opinions, yes. So</p> <p>14 it was germane to that opinion.</p> <p>15 Q. Okay. And earlier we had a little bit of</p> <p>16 a discussion about objective evidence, and I know a</p> <p>17 lot of that is outside of your realm of expertise.</p> <p>18 So Officer Kenny's statements are not</p> <p>19 objective evidence, correct?</p> <p>20 A. I would say they're just statements. I</p> <p>21 looked at them as statements.</p> <p>22 Q. Okay. So in the methodology of discourse</p> <p>23 analysis that you gave earlier, statements and the</p> <p>24 statements of Officer Kenny, are statements, they're</p> <p>25 not objective evidence as we discussed that term</p>
<p style="text-align: right;">Page 74</p> <p>1 in your report on the -- reference specific facts,</p> <p>2 are those the ones that you relied upon in reaching</p> <p>3 those opinions?</p> <p>4 A. I guess it depends a little bit on</p> <p>5 interpretation or definition of relied upon. Facts,</p> <p>6 the way I use facts it sets the framework, and I</p> <p>7 develop the opinion based on either standards in the</p> <p>8 industry, practice of the industry or what have you.</p> <p>9 Q. Yeah.</p> <p>10 A. So it's probably akin to a VENN diagram</p> <p>11 where you have the industry standards and then you</p> <p>12 have the facts and in the center they overlap.</p> <p>13 Q. Okay.</p> <p>14 A. So that would be my best answer for that.</p> <p>15 MR. HALL: Kate, are you on?</p> <p>16 MS. HARRELL: I'm here.</p> <p>17 MR. OWENS: Okay. Thanks. Sorry. My</p> <p>18 apologies.</p> <p>19 MS. HARRELL: No, you're okay.</p> <p>20 MR. OWENS: Did you want to weigh in on</p> <p>21 phenomenology?</p> <p>22 MR. SWAMINATHAN: Keep going.</p> <p>23 BY MR. OWENS:</p> <p>24 Q. In our discussion earlier, the facts that</p> <p>25 you relied upon, I guess I'm wondering -- you know,</p>	<p style="text-align: right;">Page 76</p> <p>1 earlier?</p> <p>2 A. I would say that they're statements. The</p> <p>3 investigation may sit on the fence a little bit</p> <p>4 because it was done by, you know, someone else. But</p> <p>5 you know, it kind of goes back to the -- his</p> <p>6 statements are basically that phenomenological</p> <p>7 approach again. How they're used and when they're</p> <p>8 used, I considered it just his statements.</p> <p>9 Q. Got it.</p> <p>10 And his statement is not objective</p> <p>11 evidence because it's based upon his reporting about</p> <p>12 things that he experienced or believed he</p> <p>13 experienced, right?</p> <p>14 A. Right. If I'm writing a report that</p> <p>15 would be a subjective variable.</p> <p>16 Q. Right. And that's because your reporting</p> <p>17 is subjective from your perspective?</p> <p>18 A. Correct.</p> <p>19 Q. And that's the same thing with respect to</p> <p>20 Officer Kenny's statement he made in the course of</p> <p>21 this investigation?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Now, let's sort of begin our train</p> <p>24 going from top to bottom here.</p> <p>25 A. Okay.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016

77-80

<p style="text-align: right;">Page 77</p> <p>1 Q. I'll warn you in advance we're just going 2 to go front to back. That's something I normally 3 do. 4 So let's start at the beginning where the 5 focus of your analysis because I really need to know 6 what your focus was here. 7 In the first paragraph of -- on page 2 8 you say here that you were asked to review documents 9 produced in discovery, certain pleadings, other 10 publically available documents. And this is where I 11 want to start focusing in this sentence. 12 "Then analyze his use of force and 13 tactics, in addition to related issues, and then 14 offer opinions about the same." 15 A. Correct. 16 Q. Okay. And I know this may seem 17 redundant. The only thing that you have been asked 18 to analyze and you have opinions on are those 19 contained in this report? 20 A. Correct. 21 Q. Okay. Now, I wanted to get a little bit 22 of clarification to the extent I could about the 23 level at which you're analyzing Officer Kenny's use 24 of force. And what I mean by that is, you 25 understand that use of force for police officers is</p>	<p style="text-align: right;">Page 79</p> <p>1 Q. I do appreciate that clarification. So 2 you're not offering a conclusion about whether or 3 not Officer Kenny's conduct was in violation of the 4 fourth amendment, right? 5 A. Correct. 6 Q. That's a question for the trier of fact? 7 A. Correct. 8 Q. And so your discussion of Graham against 9 Connor and other legal things relate solely to 10 Officer Kenny's -- the relationship between his 11 behavior as indicated in the statements which you 12 relied upon and the factors that you know he was 13 trained on? 14 A. I would even go and add one more 15 component to that. It would be his statements, his 16 training -- first his training because that came 17 first. 18 Q. Sure. 19 A. Then the situation and then his 20 statements. Because the situation I think is 21 important because we look at was it tense, was it 22 rapidly involving, what were the behaviors that he 23 saw. That obviously goes back to applying his 24 training to what he saw and perceived and knew at 25 the time and then what he said afterwards.</p>
<p style="text-align: right;">Page 78</p> <p>1 governed by a number of things, the United States 2 Constitution, Wisconsin law, agency policy and then 3 officer training, right? 4 A. Correct. 5 Q. And that's in the, you know, use of force 6 training manual which you reviewed, right? 7 A. Right. 8 Q. And so what I'm wondering is, are your 9 opinions expressed at any particular level or are 10 they expressed across all of them or does it vary by 11 opinion? 12 A. That's a good question. Some of it may 13 vary by opinion. Most of it's at the -- what I 14 would call the 10,000-foot level looking at it from 15 the Graham versus Connor viewpoint. What officers 16 are trained in. I mean, I looked at what officers 17 are trained in in Wisconsin, I looked at obviously 18 the Graham versus Connor criteria that officers are 19 trained in. 20 And I guess this would be an appropriate 21 time to qualify that, that my analysis is not a 22 legal analysis, it's from a training analysis. What 23 they were trained in and how they applied that 24 training to the situation. So that's just for 25 clarification.</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Right. And the basis for your opinions 2 about what he saw and perceived and knew at the 3 time, rely upon the account provided by Officer 4 Kenny, correct? 5 A. Yes. 6 Q. Now, did you assume his account was 7 correct and accurate? 8 A. I didn't make any credibility assessments 9 at all. The only -- the only thing that would come 10 close to accepting or rejecting is if there's 11 deposition testimony. I assume that when people say 12 they're going to tell the truth that they honor 13 that. But it's up to the trier of fact to determine 14 whether or not the person is, you know -- has the 15 veracity that he or she may or may not have, that's 16 not my job. 17 Q. Okay. And I understand that's not your 18 job. What I'm asking is, did you just assume that 19 Officer Kenny's account was truthful and accurate? 20 A. I assume that what he said is what he 21 said, and I had nothing to refute that. I mean, if 22 he said he got punched and there's only two people 23 and one of them is now deceased, it's really kind of 24 hard for me to say there's a third version out there 25 somewhere. And I think I mentioned earlier that a</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
81-84

<p style="text-align: right;">Page 81</p> <p>1 lot of this happened in kind of isolation, if you 2 will. 3 MR. OWENS: Can you read that question 4 back to me? 5 (Record read.) 6 BY MR. OWENS: 7 Q. So am I right that you assumed that what 8 Officer Kenny said is what happened? 9 A. Not necessarily what he said. Part of it 10 is what he said. Part of it is what the dispatch 11 told him and part of it, a small piece, is the video 12 because the video only captured, in my opinion, sort 13 of the end of the event. 14 Q. And let me narrow my question. 15 A. Okay. 16 Q. Am I right that you're assuming that what 17 he said about his interaction with Tony Robinson is 18 what happened? 19 A. Because that's the only person who 20 discussed it, sure. 21 Q. Okay. Do you have an approach that's 22 different for use of force incidents than other 23 cases that you analyze in terms of your methodology? 24 A. No. I would say the approach is pretty 25 consistent.</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. And that is your statement of practice? 2 A. That is standard. Sometimes there's no 3 postincident and sometimes there is no preincident, 4 but there's always incidents. 5 Q. Okay. So Opinion No. 1 is that Officer 6 Kenny was trained and certified as a Wisconsin 7 police officer, correct? 8 A. Correct. 9 Q. And you have this opinion because based 10 upon the documents that you've cited here; is that 11 right? 12 A. Correct. 13 Q. And do you have any specific expert 14 knowledge that was necessary to reach this opinion? 15 A. I'm not sure what you mean by expert 16 knowledge. 17 Q. Right. So is this -- now, I could look 18 at the documents that you cited here and know that 19 Officer Kenny graduated from the police academy in 20 2002 and went solo in Spring of 2003, right? 21 A. Right. 22 Q. Me knowing that fact doesn't require any 23 special expertise or anything like that, right? 24 A. Well, no, I would disagree with you. 25 Because in the state of Wisconsin you can be a peace</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. Okay. And following up is -- you assumed 2 that what Officer Kenny said is accurate, right, 3 about what happened? 4 A. Yeah, the statements and the 5 investigation report, yes. 6 Q. And that his statements were accurate 7 reporting of what happened in his interactions with 8 Officer Kenny? 9 MR. HALL: Objection. 10 THE WITNESS: You mean Mr. Robinson? 11 BY MR. OWENS: 12 Q. Let me ask that again. 13 A. Okay. 14 Q. That Officer Kenny's statements were 15 accurate with respect to his interaction with Tony 16 Robinson? 17 A. Yes. 18 Q. Okay. And now, I think you said this 19 earlier, but let's just get this a little cleaner. 20 Is that it's your usual practice to 21 divide in your expert witness work and analysis of 22 an incident into preincident -- preincident 23 opinions, incident opinions and postincident 24 opinions, right? 25 A. Correct.</p>	<p style="text-align: right;">Page 84</p> <p>1 officer without graduating from the academy. 2 There's a window of time, and I believe it's at 3 least a year where you could be hired and working 4 without having graduated from the academy under 5 state law. 6 So I think the knowledge with that 7 coupled with you have to be certified or should be 8 certified and an understanding of the curricula that 9 he went through, I don't think that goes to common 10 sense or lay opinion. I think you have to know 11 that. I've taught in the state of Wisconsin, I've 12 taught across the state of Wisconsin and that's 13 something I don't think a layperson would have. 14 Q. So a layperson wouldn't know that he 15 graduated from the police academy in 2002 and went 16 solo in the spring of 2003, you're not able to 17 understand that? 18 A. Oh, I think somebody could read it, a 19 diploma hanging on a wall and say okay, he 20 graduated. 21 Q. Okay. 22 A. That's the same thing as you went to law 23 school and graduated, that doesn't mean you passed 24 the bar, that just meant you graduated from law 25 school.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
85-88

<p style="text-align: right;">Page 85</p> <p>1 Q. Sure.</p> <p>2 A. Same thing here, he's certified. Yeah,</p> <p>3 somebody could look at that diploma, but it's the</p> <p>4 interpretation what's that mean. To me this is very</p> <p>5 important because he was certified, he went through</p> <p>6 the field training officer program, he did go solo,</p> <p>7 he took advance training. I'm not sure the average</p> <p>8 person knows what special weapons and tactics</p> <p>9 training is all about. And the last sentence that</p> <p>10 he got his undergraduate degree, again somebody</p> <p>11 could look at a diploma and see that.</p> <p>12 Q. Okay.</p> <p>13 A. I think it's what's behind this that's</p> <p>14 important.</p> <p>15 Q. So can we agree that the first sentence</p> <p>16 about Officer Kenny going to the police academy,</p> <p>17 that's not something that required expert knowledge,</p> <p>18 right?</p> <p>19 A. No, I think that requires expert</p> <p>20 knowledge because you can have officers in that</p> <p>21 state who didn't go to the police academy.</p> <p>22 Q. Okay.</p> <p>23 A. And I think the police academy is</p> <p>24 different than the correctional training. And</p> <p>25 correctional training is different than other</p>	<p style="text-align: right;">Page 87</p> <p>1 be certified.</p> <p>2 Q. Okay. Does the word "certified" appear</p> <p>3 in this paragraph?</p> <p>4 A. Only in the opinion.</p> <p>5 Q. In the paragraph of support?</p> <p>6 A. No, because the support is for the word</p> <p>7 certified.</p> <p>8 Q. Now, is there a reason that you left out</p> <p>9 the fact that Officer Kenny was trained as an</p> <p>10 instructor in use of Tasers or electronic control</p> <p>11 devices?</p> <p>12 A. I didn't really think it was that</p> <p>13 relevant because a Taser wasn't used.</p> <p>14 Q. Now, you have some opinions about</p> <p>15 Mr. Waller's opinions about his -- about a Taser,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And despite that you didn't think</p> <p>19 that Officer Kenny's training about using a --</p> <p>20 training and being a TASER instructor was relevant;</p> <p>21 is that right?</p> <p>22 A. I didn't say it wasn't relevant. He had</p> <p>23 it, but at some point I just didn't put it in there</p> <p>24 because a Taser wasn't used and I just didn't put it</p> <p>25 in. I mean, a special weapons tactics qualified.</p>
<p style="text-align: right;">Page 86</p> <p>1 training. So I think there's a lot to this. It may</p> <p>2 look simple on paper, but there's a lot of back</p> <p>3 story to it.</p> <p>4 Q. So does this say anything about Officer</p> <p>5 Kenny being certified, the first sentence?</p> <p>6 A. Well, the absolute first sentence is</p> <p>7 No. 1, it says Officer Kenny was trained and</p> <p>8 certified as a Wisconsin police officer. And then</p> <p>9 underneath that is the support for that opinion.</p> <p>10 Q. Sure. The first sentence for the support</p> <p>11 for that opinion, does that say anything about being</p> <p>12 certified?</p> <p>13 A. No.</p> <p>14 Q. Okay. Does the last sentence, the</p> <p>15 support for that opinion say anything about Officer</p> <p>16 Kenny being certified?</p> <p>17 A. No.</p> <p>18 Q. Okay. Does the second sentence of that</p> <p>19 paragraph say anything about Officer Kenny being</p> <p>20 certified?</p> <p>21 A. He was trained in accordance with</p> <p>22 Wisconsin training standards.</p> <p>23 Q. Does that -- I'm sorry.</p> <p>24 A. If you combine the second sentence with</p> <p>25 the first, that he graduated, he met the criteria to</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Okay. Now, I just want to make sure</p> <p>2 about this. Now, you -- I didn't see this in here.</p> <p>3 You don't have an opinion that Officer Kenny</p> <p>4 departed from his training in any way, do you?</p> <p>5 MR. HALL: Objection to form.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. OWENS:</p> <p>8 Q. And you don't have an opinion that</p> <p>9 Officer Kenny misanalyzed anything based upon the</p> <p>10 training that he had?</p> <p>11 A. Correct.</p> <p>12 Q. And you haven't offered an opinion</p> <p>13 indicating that offer Kenny should be faulted for</p> <p>14 departing from his training in any way, right?</p> <p>15 A. I have not offered an opinion that he</p> <p>16 departed from his training, correct.</p> <p>17 Q. Okay. Now, you mentioned this earlier.</p> <p>18 You recall that Officer Kenny, in his statement,</p> <p>19 indicated that he was considering whether or not he</p> <p>20 was approaching an excited delirium event, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And you're aware of that?</p> <p>23 A. Correct.</p> <p>24 Q. And you haven't faulted him for</p> <p>25 considering that, correct?</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
89-92

<p style="text-align: right;">Page 89</p> <p>1 A. No, that's a consideration.</p> <p>2 Q. And you recall in that same statement</p> <p>3 Officer Kenny discussed the fact that his training</p> <p>4 would -- in encountering excited delirium events was</p> <p>5 to use electronic controlled devices, correct?</p> <p>6 A. Correct.</p> <p>7 Q. You haven't faulted him for that, right?</p> <p>8 A. Correct.</p> <p>9 Q. Now, let's talk about excited delirium.</p> <p>10 We talked a little bit earlier about agitated</p> <p>11 control events.</p> <p>12 A. Chaotic events. Chaotic.</p> <p>13 Q. Agitated chaotic events.</p> <p>14 A. There we go.</p> <p>15 Q. Now, your opinion here is that no one</p> <p>16 knew if Mr. Robinson was in a state of excited</p> <p>17 delirium before or during Officer Kenny's engagement</p> <p>18 with him in close combat, right?</p> <p>19 A. Correct.</p> <p>20 Q. Now, I within to break this sentence</p> <p>21 apart. Now, during Officer Kenny's engagement with</p> <p>22 him in close combat, now you're assuming here that</p> <p>23 Officer Kenny was engaged in close combat with Tony</p> <p>24 Robinson, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 91</p> <p>1 percentage, but I'm going to estimate probably</p> <p>2 90 percent, maybe 95 percent of all excited delirium</p> <p>3 diagnoses are made postmortem. There can be a</p> <p>4 premortem diagnosis at the emergency department</p> <p>5 after the doctors do what's called a differential</p> <p>6 diagnosis and they rule out almost everything else</p> <p>7 and this is what's left.</p> <p>8 Now, the American College of Emergency</p> <p>9 Physicians wrote a paper on that, went through it.</p> <p>10 Excited delirium is accepted generally in the</p> <p>11 medical community. The ACEP paper was designed to</p> <p>12 educate emergency room physicians about the</p> <p>13 phenomenon, but mostly it's been limited to medical</p> <p>14 examiners and postmortem.</p> <p>15 Q. Okay. In terms of police training, I</p> <p>16 think that you said this early, police officers are</p> <p>17 not trained to make a diagnosis?</p> <p>18 A. That's correct.</p> <p>19 Q. And instead they're trained to respond to</p> <p>20 behaviors, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And whether it's an agitated chaotic</p> <p>23 event or whether it's excited delirium or whether</p> <p>24 it's some other type of mania, officers are trained</p> <p>25 to respond to those type of events?</p>
<p style="text-align: right;">Page 90</p> <p>1 Q. And you're assuming that based upon</p> <p>2 Officer Kenny's account of what happened, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And you're not basing that on</p> <p>5 anything outside of Officer Kenny's account, right?</p> <p>6 A. Correct.</p> <p>7 Q. Now, lets just focus on the first part.</p> <p>8 No one knew if Mr. Robinson was in a state of</p> <p>9 excited delirium before or during their engagement?</p> <p>10 A. Correct.</p> <p>11 Q. Now, can you please define to me what you</p> <p>12 mean by excited delirium?</p> <p>13 A. Excited delirium is a descriptive phrase</p> <p>14 that historically has been associated with the use</p> <p>15 of cocaine, but over time has been enlarged to</p> <p>16 include four categorical causes which include:</p> <p>17 Psychological issues, metabolic issues, infections</p> <p>18 and drugs, prescription or illicit.</p> <p>19 Q. And I want to make sure that I understand</p> <p>20 this correctly. Because excite delirium is a</p> <p>21 descriptive phrase that means it's not something</p> <p>22 that can be diagnosed; is that right?</p> <p>23 A. No, that's not correct. Medical</p> <p>24 examiners historically make that diagnosis, but most</p> <p>25 excited delirium, most, and I can't give you a</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Generally they're trained to respond to</p> <p>2 some of those events, maybe not all of them. If you</p> <p>3 have postictal psychosis following epilepsy and the</p> <p>4 officer's never been trained in epilepsy, they're</p> <p>5 going to respond to the behaviors they see, but they</p> <p>6 may not be able to apply the epileptic template to</p> <p>7 it.</p> <p>8 Q. But officers are trained to respond to</p> <p>9 mental health crises and crisis management, right?</p> <p>10 A. It depends on the state, depends on the</p> <p>11 department.</p> <p>12 Q. Sure. Let's just talk about Officer</p> <p>13 Kenny here in Wisconsin. He was given training in</p> <p>14 responding to crisis management and mental health</p> <p>15 crisis, right?</p> <p>16 A. Correct.</p> <p>17 Q. And the opinion that you've expressed</p> <p>18 here is that there's not enough known about</p> <p>19 Mr. Officers [sic] to predict whether or not he was</p> <p>20 in a state of excited delirium and not in an</p> <p>21 agitated state that may have been triggered by other</p> <p>22 underlying causes such as infection, diabetes, et</p> <p>23 cetera, right?</p> <p>24 MR. HALL: Object to form. You meant</p> <p>25 Mr. Robinson.</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
93-96

<p style="text-align: right;">Page 93</p> <p>1 THE WITNESS: Correct.</p> <p>2 MR. HALL: Object to form.</p> <p>3 MR. OWENS: I'll read it again.</p> <p>4 BY MR. OWENS:</p> <p>5 Q. Your opinion, the support for your</p> <p>6 opinion in the second paragraph under No. 2 is that</p> <p>7 there is not enough known about Mr. Robinson for</p> <p>8 officers to predict whether or not he was in a state</p> <p>9 of excited delirium and not in an agitated state</p> <p>10 that may have been triggered by other underlying</p> <p>11 causes such as infection, diabetes, et cetera?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. What I would like some help with</p> <p>14 is distinguishing between excited delirium instance</p> <p>15 and agitated state as you refer to it here.</p> <p>16 A. Well, on the front end, I'm not sure you</p> <p>17 can make much of a distinction in some cases,</p> <p>18 depending on the situation. This is generally a</p> <p>19 hindsight evaluation.</p> <p>20 Whether the person has low blood sugar</p> <p>21 and is acting out, whether the person, as in this</p> <p>22 case, ingested mushrooms or took cocaine, the</p> <p>23 officer can't make that diagnosis. All the officer</p> <p>24 can say is, I've got these behaviors in front of me</p> <p>25 and I've got to try to manage those behaviors to the</p>	<p style="text-align: right;">Page 95</p> <p>1 excuse me, is in a state of excited delirium or</p> <p>2 whether they're having some type of response just to</p> <p>3 the drugs or whether or not it's both?</p> <p>4 A. That's a fair statement.</p> <p>5 Q. And does the fact that illicit drugs can</p> <p>6 trigger excited delirium make it impossible to</p> <p>7 disaggregate on the front end whether or not</p> <p>8 somebody is having drug related response or</p> <p>9 something else?</p> <p>10 A. I don't think the officers would be</p> <p>11 capable of distinguishing that.</p> <p>12 Q. Okay. So in this opinion, you are -- I</p> <p>13 want to just clarify your criticisms of Mr. Waller.</p> <p>14 Is your criticism of Mr. Waller that it</p> <p>15 was improper for him to make a diagnosis of excited</p> <p>16 delirium?</p> <p>17 A. Well, if in fact Mr. Waller did make a</p> <p>18 diagnosis, he's not qualified.</p> <p>19 Q. Sure.</p> <p>20 A. If Mr. Waller wanted the offer to make</p> <p>21 the diagnosis, that, too, is outside the scope of</p> <p>22 the officer's training and background.</p> <p>23 Q. Okay.</p> <p>24 A. I think what I have said here, and</p> <p>25 Mr. Waller referenced the Tim incident over in</p>
<p style="text-align: right;">Page 94</p> <p>1 best of my ability. Now, part of that equation</p> <p>2 comes on the officer's side and the other part comes</p> <p>3 on the subject's side.</p> <p>4 Q. Okay. Now, one of the causes of excited</p> <p>5 delirium is drug induced, right?</p> <p>6 A. Can be.</p> <p>7 Q. Right. One of the causes, it's not the</p> <p>8 only cause, right?</p> <p>9 A. Right.</p> <p>10 Q. It can be pharmacologic, psychological,</p> <p>11 metabolic and infection, right? That's what you've</p> <p>12 listed.</p> <p>13 A. Correct.</p> <p>14 Q. And so let's talk about the</p> <p>15 pharmacologic, which you put here "e.g., ingesting</p> <p>16 illicit or licit drugs," right?</p> <p>17 A. Correct.</p> <p>18 Q. Now, if an individual is, I think as you</p> <p>19 described earlier, running through the streets after</p> <p>20 eating some bath salts, they're likely to be in an</p> <p>21 agitated state, right?</p> <p>22 A. It could be more than likely.</p> <p>23 Q. And there's no way on the front end to</p> <p>24 distinguish between whether or not that person is</p> <p>25 having a state -- is in a state of agitated --</p>	<p style="text-align: right;">Page 96</p> <p>1 Greenbay. I'm very familiar with that incident and</p> <p>2 it was somewhat identical to this in the fact that</p> <p>3 Tim had ingested mushrooms, hallucinogenic</p> <p>4 mushrooms.</p> <p>5 Most of the medical community we've</p> <p>6 talked to in our institute after that took place did</p> <p>7 not describe that as excited delirium. Mr. Waller</p> <p>8 seems to try to make that connection. And I didn't</p> <p>9 find in his report any basis for that connection,</p> <p>10 any medical basis, any other basis other than he</p> <p>11 probably looked at the video and said that looks</p> <p>12 like excited delirium.</p> <p>13 So that -- that's a criticism. Again, as</p> <p>14 my report says, excited delirium is usually a</p> <p>15 postmortem diagnosis and it's done by the medical</p> <p>16 examiners after they collect all the evidence that</p> <p>17 they're going to collect on the case.</p> <p>18 Also, Mr. Waller said that Officer Kenny</p> <p>19 should have waited until there were four or six</p> <p>20 officers --</p> <p>21 Q. I don't want to interrupt, but I want to</p> <p>22 focus on this point.</p> <p>23 A. Your question was what was my criticism</p> <p>24 of Waller and I'm answering it, Counsel. If you</p> <p>25 want me to stop, I'll be glad to. But as I</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
97-100

<p style="text-align: right;">Page 97</p> <p>1 understood your question, you said what was I 2 critical of Mr. Waller, and that's part of my 3 critical component. 4 MR. HALL: You're cutting him off in the 5 middle of a substantive answer. 6 BY MR. OWENS: 7 Q. I think -- I will give you all the time 8 in the world to continue. 9 MR. HALL: That's not fair to the witness 10 if he's in a stream of thought. 11 BY MR. OWENS: 12 Q. Go ahead. 13 A. I thought I was answering your question 14 and if I went way out, I apologize. 15 Q. Sure. 16 A. But this is in this opinion, and Waller 17 was critical. He says basically he thinks the guy 18 is in excited delirium. We don't know that. 19 Q. Would it be improper for Officer Kenny to 20 have considered Tony Robinson to be in a state of 21 excited delirium? 22 A. I think officer Robinson -- I'm sorry, 23 Officer Kenny. 24 Q. It's my fault. 25 A. That's okay. All the names going back</p>	<p style="text-align: right;">Page 99</p> <p>1 I'm not. And this statement that, you know, this 2 happened over in Appleton or I think it was 3 Appleton. I think I said another city earlier, but 4 it was Appleton, that's a separate case study, 5 separate set of facts. 6 This is a different case study. And I 7 think the analysis has to be according to the 8 standards that experts go by, and we can't look back 9 with 20/20 hindsight. And I think Waller is doing 10 that. That's my opinion. The trier of fact may 11 come up to a totally different conclusion. 12 MR. SWAMINATHAN: Can you read back the 13 question, please. 14 (Record read.) 15 BY MR. OWENS: 16 Q. Do you mind answering that question? 17 MR. HALL: Objection to form. 18 Go ahead. 19 THE WITNESS: He can consider it. 20 BY MR. OWENS: 21 Q. Would it have been improper? 22 A. To consider it? 23 Q. Yes. 24 A. I don't think it would have been 25 improper.</p>
<p style="text-align: right;">Page 98</p> <p>1 and forth. 2 I think Officer Kenny's response you have 3 to look at the totality of the circumstances. And 4 we discussed earlier, and in some detail, that in my 5 summary of facts, we went over several pages that 6 you said well, the officer didn't know that, he 7 didn't know that he took mushrooms, he didn't know 8 this, that and the other. 9 Well, if that's true and we agreed or I 10 agreed that the officer didn't know necessarily that 11 all these behaviors took place, if that's the fact 12 for me, then that has to be the fact for Waller. 13 But Waller ignored those, but he's looking back at 14 this whole case with hindsight. I'm looking at this 15 in the moment that it was taking place. 16 The fact that Robinson took mushrooms 17 supports some of the behavior Robinson demonstrated 18 and supports a number of things that this Officer 19 Kenny did at the scene. But we cannot avoid the 20 fact that Kenny said, "I thought somebody was being 21 assaulted or beaten up upstairs and that's why I 22 went in there." 23 We can piecemeal this all day long, but I 24 think we have to tie it together at some point. I 25 think Waller is looking back with 20/20 hindsight.</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Was it improper given that he did 2 consider it? 3 A. No, I don't think it was improper. 4 Q. Okay. And would it be improper for Denny 5 Waller to take Officer Kenny at his word? 6 A. No, it wouldn't be improper. 7 Q. Now, the -- and this is in your report, 8 and we can mention this again. There's VENN 9 diagrams, right, that there's a number of behaviors 10 which could have multiple causes and that would be 11 in the middle of the circle, right? 12 So you can have a drug related mania 13 agitation on one hand. You can have a mental health 14 mania agitation on the other. And then there could 15 be a combination where a mental health issue and a 16 drug related issue combined in the middle, right, it 17 can be multiple causes to a state of agitation? 18 A. Theoretically, yes. 19 Q. Right? And it's possible that for 20 illicit drugs to contribute to some type of agitated 21 event, and it's also possible for drugs to 22 contribute to an event that may be later classified 23 as excited delirium, right? 24 A. Sure. 25 Q. And, you know, that's the implication</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
101-104

<p style="text-align: right;">Page 101</p> <p>1 between what you said here at the top of page 5, the</p> <p>2 paper you quoted, "The difficulty surrounding the</p> <p>3 clinical identification of excited delirium is that</p> <p>4 the spectrum of behavior and signs overlap with many</p> <p>5 other clinical disease processes"?</p> <p>6 A. Right.</p> <p>7 Q. And you still hold that opinion, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Now, the paragraph here, I'm on page 5,</p> <p>10 Dr. Peters.</p> <p>11 A. Okay.</p> <p>12 Q. In the second full paragraph.</p> <p>13 A. Okay.</p> <p>14 Q. And you've got sort of physical</p> <p>15 characteristics and behavioral cues that are</p> <p>16 generally present in a person who is in an excited</p> <p>17 delirium state.</p> <p>18 Do you see that?</p> <p>19 A. Right.</p> <p>20 Q. And am I right that these are things that</p> <p>21 show up sometimes but not in every single case?</p> <p>22 A. Correct.</p> <p>23 Q. I think you previously written that</p> <p>24 sweating is not going to happen in every single</p> <p>25 case, right?</p>	<p style="text-align: right;">Page 103</p> <p>1 that says "here" on one side of the column and "not</p> <p>2 here" on the other, okay? And let's just go through</p> <p>3 and you tell me which ones you believe were present</p> <p>4 here and which ones were not. Okay?</p> <p>5 Extreme agitation?</p> <p>6 A. I don't think the record's clear on that</p> <p>7 for the officer arriving.</p> <p>8 Q. Okay. So not here?</p> <p>9 A. Not here.</p> <p>10 Q. Violent or bizarre behavior?</p> <p>11 A. Yes.</p> <p>12 Q. Running wildly?</p> <p>13 A. No.</p> <p>14 Q. Screaming?</p> <p>15 A. I don't believe so when the officer got</p> <p>16 there.</p> <p>17 Q. Incoherent speech?</p> <p>18 A. No.</p> <p>19 Q. Naked or stripping off clothing?</p> <p>20 A. Stripping off clothing was reported.</p> <p>21 Q. Okay. Disorientation about place, time,</p> <p>22 purpose and even him-herself?</p> <p>23 A. I don't think the offer had any knowledge</p> <p>24 of that.</p> <p>25 Q. Superhuman strength?</p>
<p style="text-align: right;">Page 102</p> <p>1 A. Correct.</p> <p>2 Q. And that's not something that's changed?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. And this is the paragraph in which</p> <p>5 we talked about your article earlier that once we</p> <p>6 found the right one, Exhibit 216, and where you sort</p> <p>7 of go through a number of these characteristics,</p> <p>8 right?</p> <p>9 A. Correct.</p> <p>10 Q. And you say that there are only a couple</p> <p>11 of the behavioral cues present here which make it</p> <p>12 impossible to conclude that he was in a state of</p> <p>13 excited delirium, right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Which are the couple of these</p> <p>16 behavioral cues that are present?</p> <p>17 A. There were some mention of him stripping</p> <p>18 off some clothing, and I think it was monkey</p> <p>19 walking, which I guess taken in and of itself might</p> <p>20 be somewhat of a bizarre behavior given the context</p> <p>21 in which it was described.</p> <p>22 Q. Okay. Anything else?</p> <p>23 A. I think those were the two primary ones.</p> <p>24 Q. So let's go through your list and as in</p> <p>25 this paragraph. And I'm going to make an exhibit</p>	<p style="text-align: right;">Page 104</p> <p>1 A. No.</p> <p>2 Q. Diminished sense of pain?</p> <p>3 A. No.</p> <p>4 Q. Violent resistance during control and</p> <p>5 restraint?</p> <p>6 A. No.</p> <p>7 Q. Delusions of grandeur?</p> <p>8 A. No.</p> <p>9 Q. Easily distracted?</p> <p>10 A. I don't think the officer would have</p> <p>11 known that, so no.</p> <p>12 Q. Lack of focus?</p> <p>13 A. No.</p> <p>14 Q. Scattered ideas about things?</p> <p>15 A. No.</p> <p>16 Q. Acute onset?</p> <p>17 A. Officer wouldn't have known about it, no.</p> <p>18 Q. Makes people feel uncomfortable?</p> <p>19 A. I'd say yes.</p> <p>20 Q. Now, we made sort of a list here based</p> <p>21 upon the list in your report, and I want to just</p> <p>22 make sure that we're clear about the classification.</p> <p>23 You were doing this based upon the</p> <p>24 information that Officer Kenny would have had at the</p> <p>25 time that he encountered Tony Robinson?</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
105-108

<p style="text-align: right;">Page 105</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And that would have included</p> <p>3 things that he observed once he got to the scene?</p> <p>4 A. Yes.</p> <p>5 Q. And that would have included things that</p> <p>6 he was told from dispatch or his computer?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And so is this -- is this -- did I</p> <p>9 get that correct?</p> <p>10 A. I think that's correct.</p> <p>11 MR. OWENS: Can we mark this as</p> <p>12 Exhibit 217, please.</p> <p>13 (Whereupon, Exhibit 217 was</p> <p>14 marked for identification.)</p> <p>15 BY MR. OWENS:</p> <p>16 Q. Now, what is water intoxication?</p> <p>17 A. Water intoxication is known as</p> <p>18 hyponatremia where you drink too much water and it</p> <p>19 flushes the sodium out of your system and you go</p> <p>20 into an excited state or a wild state. You</p> <p>21 ultimately lead -- most cases -- not maybe in most</p> <p>22 cases, but in many cases it leads to death.</p> <p>23 Q. How much water does somebody have to</p> <p>24 drink to have that type of condition?</p> <p>25 A. Well, it depends. In Detroit they ran a</p>	<p style="text-align: right;">Page 107</p> <p>1 sense, does that -- should that be another factor on</p> <p>2 Exhibit 217 that is here or not here or do you think</p> <p>3 that that doesn't apply at all?</p> <p>4 A. Well, if he was told that's certainly a</p> <p>5 variable to consider.</p> <p>6 Q. And would you agree that there can be</p> <p>7 pharmacological or, you know, drug induced instances</p> <p>8 of excited delirium, right?</p> <p>9 A. Sure.</p> <p>10 Q. And that's what this paper says?</p> <p>11 A. This paper says a lot more than that.</p> <p>12 Q. Sure. Okay. Let's be really clear. I'm</p> <p>13 just trying to move quickly.</p> <p>14 If you'll look at -- there's no page</p> <p>15 numbers. It's the third paper -- or the third page,</p> <p>16 excuse me.</p> <p>17 A. Okay. Thank you. Got it.</p> <p>18 Q. Okay. Now, I'm looking at the second</p> <p>19 full paragraph on the left-hand column.</p> <p>20 A. Okay.</p> <p>21 Q. And this indicates, "The typical course</p> <p>22 of a published excited delirium patient involves</p> <p>23 acute drug intoxication, often a history of mental</p> <p>24 illness, especially those conditions involving</p> <p>25 paranoia, a struggle with law enforcement, physical</p>
<p style="text-align: right;">Page 106</p> <p>1 radio contest and a woman drank a couple liters of</p> <p>2 water and died. In Tennessee or Kentucky about two</p> <p>3 years ago, I think it was a seven year old girl, the</p> <p>4 father made her drink a liter and a half of grape</p> <p>5 soda and she died.</p> <p>6 Q. So it varies based upon the individuals</p> <p>7 that --</p> <p>8 A. Yes.</p> <p>9 MR. OWENS: Now, can we mark this as</p> <p>10 Exhibit 218. Kate, this is the paper, I believe,</p> <p>11 that --</p> <p>12 (Whereupon, Exhibit 218 was</p> <p>13 marked for identification.)</p> <p>14 BY MR. OWENS:</p> <p>15 Q. So on the bottom of page 4 to the top of</p> <p>16 page 5, you referred to the American College of</p> <p>17 Emergency Physicians, Excited Delirium Task Force</p> <p>18 and their discussion of excited delirium.</p> <p>19 Is this the paper in which you were</p> <p>20 relying on?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. I'm done with the exhibit.</p> <p>23 How does the fact that Mister -- that</p> <p>24 Officer Kenny was told that, you know, Mr. Robinson</p> <p>25 might have been on drugs or intoxicated in some</p>	<p style="text-align: right;">Page 108</p> <p>1 or noxious chemical control measures or electrical</p> <p>2 control device application," and it goes on from</p> <p>3 there.</p> <p>4 And my question is: You agree with me</p> <p>5 that a typical excited delirium instance can have a</p> <p>6 relationship to somebody being intoxicated or having</p> <p>7 taking drugs, right?</p> <p>8 A. I wouldn't say intoxicated because that</p> <p>9 may include alcohol.</p> <p>10 Q. Okay.</p> <p>11 A. Drug intoxication, yes.</p> <p>12 Q. Okay. And so should we add that to the</p> <p>13 chart "here" and "not here"?</p> <p>14 A. I don't think we can add it definitively,</p> <p>15 but I think we could certainly say the officer was</p> <p>16 told about it or had information about it.</p> <p>17 Q. So should there be another category for</p> <p>18 things where the officer's just told, he's suppose</p> <p>19 to consider those, right?</p> <p>20 A. That would be part of your calculus, yes.</p> <p>21 Q. Okay. So do you have any objection to</p> <p>22 putting possible drug usage in the "here" column on</p> <p>23 Exhibit 217?</p> <p>24 A. Well, I don't have any objection listing</p> <p>25 of something the officer was told, but I don't think</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
109-112

<p style="text-align: right;">Page 109</p> <p>1 we can have it both ways here. We spent a 2 considerable amount of time in the beginning saying 3 that the officer didn't know about any of these 4 things and now we're going to force fit that piece 5 in here. So I would say that rather than say here 6 and not here, we should have a third category of 7 maybe just information being told or something that 8 the officer was told something. 9 Q. Okay. So when you're saying -- when you 10 have this sentence on page 5 of your report where 11 you say Mr. Robinson was described as exhibiting 12 only a couple of these behavioral cues -- 13 A. Right. 14 Q. -- here you're just talking about the 15 account provided by Officer Kenny and not the 16 information that he was given by dispatch? 17 A. No, the information that was provided by 18 dispatch is a variable, but wasn't confirmed. When 19 you see the behaviors you can confirm those 20 behaviors, but when you have a layperson who -- and 21 I'll just use the term layperson. 22 Q. Sure. 23 A. If an unidentified caller says look, I 24 think the guy, you know, may have taken something, 25 that's something you put into your bag of knowledge,</p>	<p style="text-align: right;">Page 111</p> <p>1 caused by mushrooms similar to what we have in the 2 toxicology found in Mr. Robinson's postmortem blood. 3 Now, can you identify by name the medical 4 professionals you're referring to here? 5 A. Michael Curtis, Jeff Ho. 6 Q. How do you spell Ho? 7 A. H-o. That would probably be the two I 8 spoke to. 9 Q. Okay. Any others? 10 A. There may have been at our conference. 11 That was so long ago, it was like 2010. I don't 12 know. I may have spoken to some others. 13 Q. Okay. Was either Mr. Curtis or Mr. Ho, 14 are they both doctors? 15 A. Yes. 16 Q. Did either of them treat Tim? 17 A. No. 18 Q. Okay. Did either of them give you any 19 formal medical reports from the case? 20 A. No. 21 Q. Did you see any toxicology analysis for 22 Tim? 23 A. No. 24 Q. Okay. Were you ever retained to examine 25 the Tim incident?</p>
<p style="text-align: right;">Page 110</p> <p>1 but it's not necessarily something I'd rely on too 2 heavily until I actually saw something that would 3 confirm that. 4 Q. Okay. Now, as promised, you criticized 5 Mr. Waller's reference to the Tim incident, correct? 6 A. Correct. 7 Q. And what I heard from you earlier was 8 that part of the problem was doing a comparative 9 analysis between that case and this case; is that 10 part of your criticism? 11 A. I think we're looking at two separate 12 case studies with two separate outcomes with two 13 separate set of facts. And I'm not sure we can 14 compare the two. 15 Q. Okay. You don't think they're similar 16 enough; is that right? 17 A. I don't think they're similar enough. 18 Tim didn't fight anybody. Tim wasn't running around 19 in public. Tim was home. Tim was with his mother. 20 Tim was docile until he was strapped in the gurney. 21 Q. Any other reasons? 22 A. That's basically it. 23 Q. Okay. Now, you have this statement here, 24 which you repeated a variant of today, that many 25 medical professionals have told you it was delirium</p>	<p style="text-align: right;">Page 112</p> <p>1 A. No. 2 MR. OWENS: Are you doing all right? 3 MS. REPORTER: Yes. 4 MR. OWENS: Sorry, I feel like I'm 5 talking fast. 6 BY MR. OWENS: 7 Q. Okay. So, now the second major category 8 of opinions you have in this case is the incident 9 opinions. 10 A. Okay. 11 Q. And we can start discussing, you know, a 12 few hours into this, finally the incident. 13 And your opinion here is, "In this 14 situation, it was appropriate for Officer Kenny to 15 enter the building because he believed there were 16 exigent circumstances that required such action," 17 correct? 18 A. Correct. 19 Q. And so the -- am I right that the 20 structure of your opinion is that if Officer Kenny 21 did not believe that there were exigent 22 circumstances that required such action, he would 23 have not -- it would have not been appropriate for 24 him to enter the building? 25 A. I think absent exigent circumstances as</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016

113-116

<p style="text-align: right;">Page 113</p> <p>1 described by the officer, it would have been</p> <p>2 reasonable to wait for backup.</p> <p>3 Q. Why is that?</p> <p>4 A. Well, I think if you had backup on the</p> <p>5 way and it wasn't long away and there's nothing</p> <p>6 exigent that would cause you to really go into that</p> <p>7 building, it's always better to have some support.</p> <p>8 Q. Are there any other reasons?</p> <p>9 A. No. I just think it's -- it would</p> <p>10 probably short of that absence -- the problem in a</p> <p>11 sense is this is a very narrow staircase. You're</p> <p>12 not going to put a lot of people going up the</p> <p>13 stairs, that's not going to happen. So, you know,</p> <p>14 if there's nothing going on, you know, you might</p> <p>15 wait him out, but that didn't happen. But if it</p> <p>16 were a hypothetical, I mean, that's a possibility of</p> <p>17 happening.</p> <p>18 Q. Sure. And if there were no exigent</p> <p>19 circumstances, you agree that the general training</p> <p>20 that Officer Kenny had in this case would have been</p> <p>21 to wait for that backup to operate from a -- excuse</p> <p>22 me, operate from a situation of control?</p> <p>23 A. No, I don't think it's a situation of</p> <p>24 control, I think it's a situation of having backup.</p> <p>25 I don't think in this case the officers control the</p>	<p style="text-align: right;">Page 115</p> <p>1 health incidences that this is a medical emergency,</p> <p>2 not necessarily a criminal one first, right?</p> <p>3 A. It depends on the situation.</p> <p>4 Q. Well, I mean, that's what you've written</p> <p>5 before, right?</p> <p>6 A. It also depends on the situation. If you</p> <p>7 can clearly establish that it is a medical</p> <p>8 emergency, yes. If you're being attacked, the</p> <p>9 medical emergency paradigm goes out the window</p> <p>10 because you got to defend yourself.</p> <p>11 Q. Okay. But if you're not being attacked,</p> <p>12 you would agree with proposition that regardless of</p> <p>13 whether an officer determined whether it's an</p> <p>14 agitated chaotic event or excited delirium, that</p> <p>15 it's a medical emergency that should be responded</p> <p>16 to, correct?</p> <p>17 A. It will probably be a medical emergency,</p> <p>18 but your hypothetical is too limited because I can</p> <p>19 have somebody who's in that state, whatever that</p> <p>20 state is --</p> <p>21 Q. Sure.</p> <p>22 A. -- we'll call it delirium, who's running</p> <p>23 in traffic and I've got to get him out of traffic or</p> <p>24 somebody's got to get him out of traffic. Or he's</p> <p>25 cut himself by punching glass and he's bleeding.</p>
<p style="text-align: right;">Page 114</p> <p>1 situation. The suspect controls the situation.</p> <p>2 Q. Sure.</p> <p>3 A. The officers will react to it.</p> <p>4 Q. Well, officers and Officer Kenny in</p> <p>5 particular, they're trained to not put themselves in</p> <p>6 situations where they are putting their lives at</p> <p>7 risk or where they could be overtaken, right?</p> <p>8 A. Well, that statement that you gave would</p> <p>9 be incorrect because every time an officer makes a</p> <p>10 traffic stop, he or she is putting themselves at</p> <p>11 risk.</p> <p>12 Q. Sure.</p> <p>13 A. Every time you run into a burning</p> <p>14 building you're putting yourself at risk.</p> <p>15 Q. Sure. But officers are trained to avoid</p> <p>16 take unnecessary risks, correct?</p> <p>17 A. As a general rule, I would agree with</p> <p>18 that.</p> <p>19 Q. Okay. And officers are trained in</p> <p>20 responding to mental health incidents that subjects</p> <p>21 may be out of control and require multiple officers</p> <p>22 to subdue?</p> <p>23 A. In some situations that may be correct.</p> <p>24 Q. And you agree that the paradigm when</p> <p>25 responding to suspected excited delirium or mental</p>	<p style="text-align: right;">Page 116</p> <p>1 Yeah, that's a medical emergency. But I first have</p> <p>2 to capture, control or restrain him because the</p> <p>3 paramedics aren't going to do anything unless he's</p> <p>4 captured, control and restrained.</p> <p>5 Q. Right.</p> <p>6 A. So it's not a black and white answer.</p> <p>7 Q. Right. And officers are trained to, you</p> <p>8 know, in those situations often use electronic</p> <p>9 control devices to capture, control and restrain,</p> <p>10 correct?</p> <p>11 A. In some cases that's correct.</p> <p>12 Q. We've been assuming or discussing, you</p> <p>13 know, the absence of exigent circumstances.</p> <p>14 Can you define for me what you consider</p> <p>15 exigent circumstance?</p> <p>16 A. An exigent circumstance is something</p> <p>17 that's immediate, that is occurring at the moment in</p> <p>18 front of you forcing you to take action that you</p> <p>19 might not otherwise take for the safety of a</p> <p>20 subject, for the safety of a third party or for your</p> <p>21 own safety.</p> <p>22 Q. Now, I'm right -- am I right that the</p> <p>23 exigent circumstances that have been identified here</p> <p>24 all came from Officer Kenny?</p> <p>25 A. Yes.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
117-120

<p style="text-align: right;">Page 117</p> <p>1 Q. And I just want to make sure because this</p> <p>2 is not in your opinion here, and I want to make sure</p> <p>3 you're not offering opinion about this.</p> <p>4 You offer no opinion about whether or not</p> <p>5 it was appropriate for Officer Kenny to enter the</p> <p>6 residence with a gun drawn as opposed to a baton</p> <p>7 drawn or as opposed to a Taser drawn, correct?</p> <p>8 A. I think I mentioned that in my Opinion 3.</p> <p>9 The last sentence in the first paragraph says, "And</p> <p>10 if an officer believed there to be an exigent</p> <p>11 circumstance, it is okay to draw a firearm as</p> <p>12 Officer Kenny did prior to entering the residence."</p> <p>13 So I think I did cover that.</p> <p>14 Q. Okay. So that's part of your opinion</p> <p>15 here in Opinion 3?</p> <p>16 A. Yes.</p> <p>17 Q. So if we're just looking at the bullet</p> <p>18 point summary, we should -- that it was appropriate</p> <p>19 for Officer Kenny to enter the building with his</p> <p>20 firearm drawn?</p> <p>21 A. Yes.</p> <p>22 Q. Now, earlier you -- excuse me. Earlier I</p> <p>23 think in one of your answers you indicated we can't</p> <p>24 judge a situation from hindsight, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 119</p> <p>1 what the officer believed at the time.</p> <p>2 Q. Got it. It goes both ways.</p> <p>3 A. Correct.</p> <p>4 Q. So if you learn some information later</p> <p>5 that suggests the officer was right, that doesn't</p> <p>6 count. If you learn some information later that the</p> <p>7 officer was wrong, that doesn't count; is that</p> <p>8 right?</p> <p>9 A. That's what the officer believed at the</p> <p>10 time, that's the standard.</p> <p>11 Q. Okay. Now, you agree that Officer Kenny</p> <p>12 didn't know whether there was a large knife or sword</p> <p>13 upstairs in the residence, right?</p> <p>14 A. He didn't know that at that time.</p> <p>15 Q. So that's not something that could have</p> <p>16 contributed to the exigency which would have</p> <p>17 justified entering the home, correct?</p> <p>18 A. Well, he didn't know about it so</p> <p>19 obviously no.</p> <p>20 Q. Okay. Why is that included here?</p> <p>21 A. It's included because that's what it --</p> <p>22 was later found and the officer believed that</p> <p>23 somebody was being assaulted upstairs, that's why</p> <p>24 it's there. It was found and there it is.</p> <p>25 Q. Okay. But you agree it couldn't have</p>
<p style="text-align: right;">Page 118</p> <p>1 Q. And that would apply to the exigent</p> <p>2 circumstances as well, right?</p> <p>3 A. I'm confused.</p> <p>4 Q. So, you know, if the exigent</p> <p>5 circumstances that are on the table analyzing the</p> <p>6 use of force are only the exigent circumstances</p> <p>7 known or believed to be known to the officer when</p> <p>8 he's making the decision, right?</p> <p>9 A. Right, what he knows at that time.</p> <p>10 Q. Right. And things that are later learned</p> <p>11 through the investigation, those don't constitute</p> <p>12 somehow a retroactive exigency, right?</p> <p>13 MR. HALL: Objection. Form.</p> <p>14 Go ahead.</p> <p>15 THE WITNESS: That would make sense, I</p> <p>16 think, for the most part if I'm following your</p> <p>17 hypothetical.</p> <p>18 BY MR. OWENS:</p> <p>19 Q. Sure. There's information learned later</p> <p>20 on that the officer didn't know, that -- that cannot</p> <p>21 somehow be retroactively applied as part of the</p> <p>22 exigency of the situation, right?</p> <p>23 A. Well, if he didn't know it, it wouldn't</p> <p>24 be part of the calculus of the exigency nor what's</p> <p>25 learned later would it discount the exigency, it's</p>	<p style="text-align: right;">Page 120</p> <p>1 contributed to the exigency, right?</p> <p>2 A. Well, he didn't know about it, you're</p> <p>3 right.</p> <p>4 Q. Okay. And the shotgun also wasn't known</p> <p>5 located in the apartment, that wasn't known to</p> <p>6 Officer Kenny at the time, right?</p> <p>7 A. As far as I know it wasn't known,</p> <p>8 correct.</p> <p>9 Q. Okay. And so does the fact that the -- a</p> <p>10 shotgun with shells was located in the search of the</p> <p>11 apartment, is that part of your analysis in terms of</p> <p>12 believing that there was exigent circumstances?</p> <p>13 A. No, the officer said he believed somebody</p> <p>14 was being attacked. And as I recall, somebody --</p> <p>15 there were something -- some words that were said</p> <p>16 that led him to further believe there was an</p> <p>17 assault.</p> <p>18 Q. Got it. On Opinion 3 on the exhibit, is</p> <p>19 it fair to say that the first three sentences there</p> <p>20 are not facts that you relied upon in -- that would</p> <p>21 have applied to whether or not there was an exigency</p> <p>22 here?</p> <p>23 A. No. Most of -- most of that paragraph</p> <p>24 goes to Mr. Waller. Mr. Waller said that</p> <p>25 Mr. Robinson could have been armed and then we --</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
121-124

<p style="text-align: right;">Page 121</p> <p>1 and then it was found later these weapons. So in a</p> <p>2 sense, Mr. Waller is making an assumption that</p> <p>3 Mr. Robinson could have been armed, and evidence</p> <p>4 basically supported that supposition.</p> <p>5 Then later Mr. Waller says in the last</p> <p>6 sentence, "Also testified officers must always plan</p> <p>7 for the worst." So you do plan for the worst. And</p> <p>8 if you have that circumstance and you plan for the</p> <p>9 worst, you would go in with your gun drawn.</p> <p>10 Q. Okay. So Officer Kenny didn't know that</p> <p>11 there was a large knife or sword upstairs or a</p> <p>12 shotgun?</p> <p>13 A. Right.</p> <p>14 Q. And the information here about the large</p> <p>15 knife or sword or the shotgun, that's not part of</p> <p>16 your -- the basis for your opinion?</p> <p>17 A. Right. Because the focus here is on</p> <p>18 Waller saying it's common sense not to enter. Well,</p> <p>19 if you don't know that there's a shotgun up there</p> <p>20 and you don't know these other things but you still</p> <p>21 are planning for the worst, you can't have it both</p> <p>22 ways. The officer showed up, he believed there was</p> <p>23 something immediate that he had to attend to and he</p> <p>24 went in.</p> <p>25 Q. Okay. So part of your criticism of</p>	<p style="text-align: right;">Page 123</p> <p>1 A. Correct.</p> <p>2 Q. And so Waller testifies it's 15 to</p> <p>3 20 seconds, and you're saying that there's 48</p> <p>4 seconds reported in something in the Dane County</p> <p>5 incident reports which you consider objective</p> <p>6 evidence, right?</p> <p>7 A. They're a part of it, yes.</p> <p>8 Q. Okay. And the video itself is also</p> <p>9 objective evidence, right?</p> <p>10 A. Correct.</p> <p>11 Q. I just want to be clear you're not in any</p> <p>12 way here disputing the video, right?</p> <p>13 A. No, I'm not.</p> <p>14 Q. Okay. And you're not -- well, let me</p> <p>15 withdraw that.</p> <p>16 So it's your opinion here in these two</p> <p>17 paragraphs is that it could have taken more time</p> <p>18 for -- between when Officer Kenny entered the home</p> <p>19 and shots were fired than Mr. Waller was giving him</p> <p>20 credit for?</p> <p>21 A. I'm not sure Mr. Waller is giving credit.</p> <p>22 I'm not sure that's the appropriate term. I'm just</p> <p>23 saying that Waller said X and I looked at it and</p> <p>24 found Y, that's all.</p> <p>25 Q. Let me ask it just a cleaner way.</p>
<p style="text-align: right;">Page 122</p> <p>1 Mr. Waller was that you found that Officer Kenny had</p> <p>2 the types of specifics to believe there was an</p> <p>3 exigency to enter the residence, correct? That is</p> <p>4 the first paragraph -- excuse me, the first sentence</p> <p>5 of the next paragraph.</p> <p>6 A. Yeah, in the second paragraph.</p> <p>7 Q. Right.</p> <p>8 A. We have the specifics.</p> <p>9 Q. Right. I'm just trying to be pretty</p> <p>10 narrow. Which is in the second paragraph you say</p> <p>11 that Officer Kenny had, quote, specifics, end quote,</p> <p>12 to believe there was an exigency to enter the</p> <p>13 residence.</p> <p>14 A. Correct.</p> <p>15 Q. And all of those quote specifics are</p> <p>16 based upon the account given by Officer Kenny,</p> <p>17 right?</p> <p>18 A. Right.</p> <p>19 Q. Now, going on to the top of page 7 in</p> <p>20 your report, there are two paragraphs here, and I</p> <p>21 believe you referenced them earlier, they concern</p> <p>22 the stairwell and you refer to Mr. Waller's</p> <p>23 testimony saying that there's 15 to 20 seconds on</p> <p>24 the stairs and then you refer to the Dane County</p> <p>25 incident reports which suggest 48 seconds, right?</p>	<p style="text-align: right;">Page 124</p> <p>1 So am I right that the thrust of your</p> <p>2 criticism here that officer -- excuse me.</p> <p>3 Am I right that the thrust of your</p> <p>4 criticism here is that Mr. Waller considered a</p> <p>5 shorter time frame and you've identified objective</p> <p>6 evidence with a longer time frame between when</p> <p>7 Officer Kenny entered the house and when shots were</p> <p>8 fired?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And do you have an opinion about</p> <p>11 the time it takes to ascend the stairway?</p> <p>12 A. I don't have an opinion because ascending</p> <p>13 the stairway is going to be a function of the speed</p> <p>14 you ascend.</p> <p>15 Q. Right. And how long does it take to</p> <p>16 ascend this particular stairway?</p> <p>17 A. I don't know. I haven't ascended it.</p> <p>18 Q. Okay.</p> <p>19 A. And I don't know -- if you want to give</p> <p>20 me a rate of speed, we could probably calculate it</p> <p>21 but short of that, I don't know.</p> <p>22 Q. And did you have -- rely on any facts</p> <p>23 about how fast Officer Kenny said he was going up</p> <p>24 the stairs?</p> <p>25 A. I think he went in and he went up and he</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
125-128

<p style="text-align: right;">Page 125</p> <p>1 confronted Mr. Robinson. I'm not sure that his 2 perception of speed may be accurate or inaccurate, I 3 don't know. I didn't look at that, I just looked at 4 the time frames as being different. 5 Q. Right. And do you recall the number of 6 stairs? 7 A. I don't independently. I could look it 8 up. 9 Q. And is the reason that you're saying that 10 there's a different time frame in the Dane County 11 incident reports because shows that Officer Kenny 12 was being more cautious going up the stairs? 13 A. I'm not sure what he was being because I 14 wasn't there. I'm just showing that there's an 15 inconsistency. Now, it could be that he was more 16 cautious going up the stairs. It could be that he 17 was punched and was coming down the stairs, that 18 would take up some time, or it could be that this 19 incident unfolded very rapidly right at the top of 20 the stairs. I'm just saying that in my analysis, I 21 found something different than what Mr. Waller 22 reported. 23 Q. Okay. And in your analysis you also 24 relied on the idea that Officer Kenny was being 25 cautious, correct?</p>	<p style="text-align: right;">Page 127</p> <p>1 it is because Mr. Waller's primary criticism, as I 2 said there, he doesn't think there was an exigency 3 for the officer to go up there, and he uses 15 to 27 4 seconds. And I looked at it that it takes time to 5 go up the steps, it takes time to get punched in the 6 head, it takes time to come back down the steps, and 7 I just found a different time frame. 8 Q. Okay. So your Opinion No. 3 opinion is 9 that it was appropriate for Officer Kenny to enter 10 the building because he believed there were exigent 11 circumstance that required such action, correct? 12 A. Correct. 13 Q. Now, how is the period of time that he 14 was in the stairwell relevant to whether or not he 15 was justified entering in the first place? 16 A. I don't think the period in a stairwell 17 does that. 18 Q. So you agree with me, then, that the 19 period of time in the stairwell is not determined 20 whether it was appropriate for him to enter or to 21 not enter? 22 A. Well, he wouldn't have -- again, we can't 23 start at the end and come forward. He wouldn't 24 have -- he wasn't in the stairwell when he entered 25 in the sense of he wasn't in that time mode. He was</p>
<p style="text-align: right;">Page 126</p> <p>1 A. Yes. 2 Q. It's in your report. "Yet he is critical 3 of Officer Kenny being cautious," right? 4 A. Right. 5 Q. And what's your basis for the opinion 6 that Officer Kenny was being cautious while 7 proceeding up or down or while in the stairwell? 8 A. I think there was reference made in the 9 documents that he proceeded cautiously, encountered 10 the person at the top, took that punch, according to 11 the officer. Started, I think he said maybe back 12 stepping, or words to that effect, coming down those 13 stairs. I don't think it was -- this is a tough -- 14 a tough design of how -- where you open a door and 15 there's the stairs. It's not like you're in the 16 basement you're coming up stairs. I mean, it's like 17 there you are and he went up. 18 Q. I take it these are common in that area? 19 A. I'm familiar with those types of homes. 20 I'm just saying from a perspective of having a lot 21 of options, there's not a lot of options here. 22 Q. Okay. So am I right that the two 23 paragraphs here at the top of page 7 are primarily 24 designed criticizing Mr. Waller? 25 A. Well, in a sense, I guess we can -- yeah,</p>	<p style="text-align: right;">Page 128</p> <p>1 at the beginning of all that. He entered that 2 stairwell because he thought there was an exigent 3 circumstance. This is in response to your expert's 4 opinion. 5 Q. Got it. 6 So this right here is a responsive 7 opinion, not necessarily the same thing as your 8 opinion expressed on the page before; is that fair 9 to say? 10 A. No, I think -- I think it goes somewhat 11 hand in hand in that Mr. Waller was -- Mr. Waller 12 said there wasn't an exigency and then he cited the 13 second. I'm responding to that. This opinion goes 14 to the exigency belief as to why the officer entered 15 it. In my opinion, Waller is using the seconds to 16 discount the exigency, I'm countering that with my 17 analysis. 18 Q. Okay. But there was more seconds and 19 more time in the stairwell likely? 20 A. Correct. 21 Q. Okay. And that would help illustrate an 22 exigency, is that your opinion? 23 A. No, it helps to, I think, counter what 24 Waller said about the exigency. 25 Q. Okay.</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
129-132

<p style="text-align: right;">Page 129</p> <p>1 A. I'm a little -- as it says here, 2 confusing and convoluted, wasn't quite sure what 3 Waller was saying there. 4 Q. Okay. 5 A. But, not to just leave it on the table. 6 Q. Yeah. 7 A. I came back because obviously he thinks 8 the seconds in the stairwell had something to do 9 with the exigency. 10 Q. Okay. And I can't speak for Mr. Waller 11 and I'm not going to ask you to, I just want to make 12 sure our conversation is not confusing. 13 And so the opinion you reached, based 14 upon the incident reports, that there could have 15 been a longer period and an even longer period of 16 time than the one that -- excuse me, Mr. Waller 17 relied on. And that was in response to his opinion, 18 correct? 19 A. Correct. 20 Q. Okay. 21 MS. REPORTER: Can we take a break? 22 MR. OWENS: Sure. 23 (A recess was taken.) 24 BY MR. OWENS: 25 Q. So the -- backing up a little bit. We</p>	<p style="text-align: right;">Page 131</p> <p>1 Q. Okay. We were just discussing page 7 in 2 your report about the first two paragraphs, and I 3 think we've, you know, fairly much exhausted this, 4 but I just want to be clear. 5 Your only criticism of Waller here is 6 that the period of time between when Officer Kenny 7 entered the stairwell and when shots were fired may 8 be longer than that which he assumed; is that right? 9 A. I think -- yeah, I think that's part of 10 it. It goes back to that first sentence, the second 11 half of that first sentence at the top of page 7, 12 that Mr. Waller's, in my opinion anyway, primary 13 criticism why he believes there was not an exigent 14 circumstance, if you will, is based on the seconds. 15 And I -- my calculation is there's more seconds. 16 And I don't think Mr. Waller was overly 17 clear on this, but you don't throw care to the wind 18 going in the front door whether there's an exigent 19 circumstance or not. There's still officer safety 20 issues you have to consider. And his time frame and 21 what he wrote would suggest that because things 22 happened so quickly that there wasn't an exigent 23 circumstance. 24 I'm saying I found it was a little 25 slower. I don't know because I wasn't there, but I</p>
<p style="text-align: right;">Page 130</p> <p>1 talked about what you've been asked to do in this 2 case and what your opinions are. 3 So I understand you're analyzing Officer 4 Kenny's use of force and it seems like, you know, in 5 looking at the report, a big thrust is also to 6 specifically respond to issues that you had with 7 Mr. Waller; is that right? 8 A. That's a fair statement. 9 Q. Okay. And you haven't been asked to do 10 anything more than that here without, you know, 11 getting into issues of privilege? 12 MR. HALL: I'm going to object to form 13 because I'm confused. 14 THE WITNESS: I was -- I was never really 15 directed which way to go. My only instruction from 16 Mr. Hall was there's no Monell claims for you to 17 analyze. You're only being retained on Officer 18 Kenny's -- 19 BY MR. OWENS: 20 Q. Sure. 21 A. Other than that, I looked at his tactics 22 and I looked at his forms and that's what I put into 23 the front of it. I didn't get a correspondence or 24 instructions look at this, look at that, the only 25 thing was there's no Monell issues.</p>	<p style="text-align: right;">Page 132</p> <p>1 don't think you throw caution to the wind. 2 Q. My question is -- I'm sorry, were you 3 done? 4 A. You're good. 5 Q. My question was a little bit narrower. 6 Your only criticism of Mr. Waller in this 7 section of the report is about the period of time 8 being longer than he reported; is that right? 9 A. Yeah, as it relates to the exigency 10 argument by Mr. Waller. 11 Q. Okay. So I want to talk -- move on to 12 your opinion about the prohibition on the use of 13 Tasers from multiple applications. Okay? 14 A. Okay. 15 Q. And it's your opinion that there's a 16 prohibition on the use of multiple applications of 17 Tasers, correct? 18 A. It's a recommendation not to do that, 19 yes. 20 Q. Okay. Is it a prohibition? 21 A. There's not a prohibition in the sense 22 that you're not allowed to do it. There's warnings 23 from the manufacturer not to do it. And as I cited 24 here from the TASER warnings, the cumulative effects 25 are an issue and the multiple cycles are an issue.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
133-136

<p style="text-align: right;">Page 133</p> <p>1 So in today's operational environment, if</p> <p>2 you will, officers are strongly discouraged from</p> <p>3 using multiple cycles.</p> <p>4 Q. Okay. And so it's so strongly that you</p> <p>5 would call it a prohibition, right? You call it a</p> <p>6 prohibition of multiple applications, right?</p> <p>7 A. I would call it that, yes.</p> <p>8 Q. Okay. So the warnings are so strong</p> <p>9 they're effectively a prohibition; is that right?</p> <p>10 A. Unless it was a really extreme</p> <p>11 circumstance, I would agree with that.</p> <p>12 Q. Okay. Now, the opinion here in Opinion</p> <p>13 4, you are not offering an opinion about whether or</p> <p>14 not a Taser is appropriate if an officer suspects</p> <p>15 excited delirium, correct?</p> <p>16 A. I'm not authoring an opinion either way.</p> <p>17 Q. And that's my point, you're not opining</p> <p>18 on that issue?</p> <p>19 A. Right.</p> <p>20 Q. And you have no opinion about the</p> <p>21 training given to officers in using OCD devices when</p> <p>22 they believe they're confronting excited delirium</p> <p>23 events, correct?</p> <p>24 A. I'm not sure I follow that.</p> <p>25 Q. Sure. I'll ask it better. I apologize.</p>	<p style="text-align: right;">Page 135</p> <p>1 A. Right. I haven't looked at that.</p> <p>2 Q. And that's not part of your opinions in</p> <p>3 this case?</p> <p>4 A. No, I looked at this question -- Opinion</p> <p>5 No. 4 about multiple cycles of the Taser, what we</p> <p>6 call reenergizing, goes to Mr. Waller's opinion.</p> <p>7 It's safe to say that the training, when you look at</p> <p>8 the training, you don't use a Taser when somebody's</p> <p>9 on an elevated platform. And I didn't put that in</p> <p>10 here because it wasn't used.</p> <p>11 Q. Okay.</p> <p>12 A. But part of the reason it may not have</p> <p>13 been used is because he was on an elevated platform.</p> <p>14 But it wasn't used, so I opined on what Mr. Waller</p> <p>15 was saying which is directly opposite of what the</p> <p>16 training recommendations are.</p> <p>17 Q. Okay. What do you mean by elevated</p> <p>18 platform, just so we're using the same terminology?</p> <p>19 A. If I was standing on this table, I'm on</p> <p>20 an elevated platform.</p> <p>21 Q. It's like somebody above you, you're not</p> <p>22 talking about a physiological elevated state or</p> <p>23 something like that?</p> <p>24 A. No, no, it's a physical. I'm on the</p> <p>25 rafter of the building, I'm on the top of the</p>
<p style="text-align: right;">Page 134</p> <p>1 Sorry, it's my own handwriting is illegible.</p> <p>2 Now, you're not offering an opinion about</p> <p>3 whether or not officers are trained to use Tasers or</p> <p>4 electronic control devices in situations in which</p> <p>5 they suspect excited delirium, right?</p> <p>6 A. I haven't put that in my report.</p> <p>7 Q. Okay. And you're -- have no opinion</p> <p>8 about whether or not they're trained to wait for</p> <p>9 backup when they are -- believe they're encountering</p> <p>10 an excited delirium or agitated chaotic event,</p> <p>11 correct?</p> <p>12 A. I stuck to the facts of the case.</p> <p>13 Q. Okay. And I just want to make sure that</p> <p>14 that's not part of your opinions that you intend to</p> <p>15 offer in this case.</p> <p>16 A. Right.</p> <p>17 Q. And you have no opinion about whether or</p> <p>18 not officers are trained to ask for backup when they</p> <p>19 are confronting a situation where they suspect</p> <p>20 excited delirium or some other type of agitated</p> <p>21 chaotic event, correct?</p> <p>22 A. Well, it would be based on their policy</p> <p>23 and procedures.</p> <p>24 Q. Right. And you haven't opined on that</p> <p>25 here?</p>	<p style="text-align: right;">Page 136</p> <p>1 stairs, I'm halfway up the stairs, I'm on a picnic</p> <p>2 table, standing on a chair, anything. If I shoot</p> <p>3 you with a Taser and make connection and get</p> <p>4 neuromuscular incapacitation that you could fall and</p> <p>5 be seriously injured or killed.</p> <p>6 Q. Got it.</p> <p>7 So let's look at the opinions -- the</p> <p>8 quotes in your report which you cite as evidence of</p> <p>9 the prohibition on multiple uses.</p> <p>10 So the first -- there's a quote here from</p> <p>11 the TASER International Handheld Warnings, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Now, what does this say, this</p> <p>14 paragraph say about the number of Taser deployments?</p> <p>15 A. Well, what it says here is that last</p> <p>16 sentence, "Following the instructions and warnings</p> <p>17 in this document will reduce the likelihood that the</p> <p>18 conducted energy weapon will cause death or serious</p> <p>19 injury."</p> <p>20 Q. Okay. Does this paragraph say anything</p> <p>21 about the number of deployments?</p> <p>22 A. No, it doesn't. All this does is set up</p> <p>23 for the second part of cumulative effects. This is</p> <p>24 all in the same document.</p> <p>25 Q. Okay. But this doesn't say anything</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
137-140

<p style="text-align: right;">Page 137</p> <p>1 about -- itself about multiple deployments, right?</p> <p>2 A. Right.</p> <p>3 Q. Okay. And I think, as you said, that</p> <p>4 leads to this cumulative effect here, right?</p> <p>5 A. Correct.</p> <p>6 Q. And now, can you underline for me in that</p> <p>7 next paragraph, or use the highlighter, what is the</p> <p>8 prohibition on multiple deployments contained in the</p> <p>9 paragraph that I think goes from the bottom of page</p> <p>10 7 and goes to the top of page 8?</p> <p>11 A. Okay.</p> <p>12 Q. And you have -- thank you.</p> <p>13 A. And some on the next page as well.</p> <p>14 Q. Okay. I will give this back.</p> <p>15 MR. OWENS: Do you want to see it?</p> <p>16 MR. HALL: Yeah.</p> <p>17 THE WITNESS: Thanks.</p> <p>18 BY MR. OWENS:</p> <p>19 Q. Now, I'm just going to read this, and let</p> <p>20 me know if I've got the portion that you highlighted</p> <p>21 incorrectly. You've highlighted, "In some</p> <p>22 individuals, the risk of death or serious injury may</p> <p>23 increase with cumulative CEW exposure. Repeated,</p> <p>24 prolonged or continuous CEW applications may</p> <p>25 contribute to cumulative exhaustion, stress,</p>	<p style="text-align: right;">Page 139</p> <p>1 subject to his Taser training.</p> <p>2 Q. Okay. Now, you did have some of his</p> <p>3 training materials related to his use of force</p> <p>4 training, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you had some of the materials which</p> <p>7 he has to follow given to him by the procedures of</p> <p>8 the Madison Police Department, right?</p> <p>9 A. Yes.</p> <p>10 Q. You didn't put any of that in here</p> <p>11 either, right?</p> <p>12 A. No.</p> <p>13 Q. Why not?</p> <p>14 A. Well, first of all, the Taser wasn't</p> <p>15 used. The only reason this is in here is because</p> <p>16 your police practices expert who's never been</p> <p>17 trained on a Taser and is not a TASER instructor,</p> <p>18 opined that you should multiple exposure someone</p> <p>19 such as Mr. Robinson. That's fallacious, it's</p> <p>20 inaccurate, and I had to address it.</p> <p>21 But the Taser itself wasn't used. The</p> <p>22 Taser is a nonissue in this case because it wasn't</p> <p>23 used. Mr. Waller made it an issue, not me. So I'm</p> <p>24 not going to go out and cite training when the issue</p> <p>25 was raised by an unqualified person.</p>
<p style="text-align: right;">Page 138</p> <p>1 cardiac, physiologic, metabolic, respiratory and</p> <p>2 associated medical risks which could increase the</p> <p>3 risk of death or serious injury."</p> <p>4 That's what you highlighted, correct?</p> <p>5 A. And then the next sentence as well.</p> <p>6 Q. I apologize. "Minimize repeated,</p> <p>7 continuous or simultaneous exposures."</p> <p>8 A. Right.</p> <p>9 Q. And this is the basis for your opinion</p> <p>10 that there's a prohibition or a warning that's so</p> <p>11 strong it's effectively a prohibition on the</p> <p>12 multiple use of Tasers?</p> <p>13 A. Yes, from the manufacturer.</p> <p>14 Q. Okay. Now, your opinion here is that</p> <p>15 officers, such as Officer Kenny, are trained not to</p> <p>16 use multiple electronic control weapon applications</p> <p>17 on a human, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Now, in the portion of 4 of your</p> <p>20 report supporting this opinion, where do you cite</p> <p>21 Officer Kenny's training?</p> <p>22 A. Well, I don't cite his specific training</p> <p>23 because I didn't have a copy of his specific lesson</p> <p>24 plan. But, I did have a copy of this version, of</p> <p>25 the warnings, which he would have been trained in</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Okay. So you're not going to cite</p> <p>2 training when your opinion is that Officer Kenny was</p> <p>3 trained not to use multiple TASER electronic control</p> <p>4 weapon applications on a human?</p> <p>5 A. Instructors sign an agreement with TASER.</p> <p>6 When they do the training they provide the latest</p> <p>7 warnings and they follow the latest lesson plan.</p> <p>8 This was the latest warnings in 2013.</p> <p>9 Q. Now, I assume that you will disagree with</p> <p>10 my characterization on the portion that you have</p> <p>11 highlighted that goes from pages 7 to 8 of your</p> <p>12 report that this is a warning.</p> <p>13 Is it a warning?</p> <p>14 A. This is part of the product warnings that</p> <p>15 are then recited as well in the lesson plan.</p> <p>16 Q. Okay. And then now, you will agree with</p> <p>17 me that starting from where you highlighted this</p> <p>18 says that this warning applies to some individuals,</p> <p>19 not all, correct?</p> <p>20 A. I agree with that.</p> <p>21 Q. And that the risk of serious death or</p> <p>22 injury may increase, correct? It's not saying it</p> <p>23 definitely will, right?</p> <p>24 A. In the set of warnings, that's correct.</p> <p>25 Q. Okay. And as far as repeated</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
141-144

<p style="text-align: right;">Page 141</p> <p>1 applications, it says it may contribute to</p> <p>2 cumulative exhaustion, stress and other medical</p> <p>3 risks, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And you'll agree by saying "may," it's</p> <p>6 not saying it necessarily shall, right?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. And it says "minimize repeated,</p> <p>9 continuous or simultaneous exposures," right?</p> <p>10 A. Correct.</p> <p>11 Q. It doesn't say never deploy repeatedly,</p> <p>12 continuously or simultaneously, correct?</p> <p>13 A. It doesn't say never, but that sentence</p> <p>14 also includes multiple officers. So if the four of</p> <p>15 us shot the same person, what it's warning against,</p> <p>16 it's not just multiple exposures from one officer,</p> <p>17 it could be from several. That's all this is</p> <p>18 saying.</p> <p>19 Q. Okay. So that's the simultaneously part</p> <p>20 of the sentence?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. So let's take out the simultaneous</p> <p>23 and let's take out the continuous because you didn't</p> <p>24 opine about continuous, right?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 143</p> <p>1 preparation of your report?</p> <p>2 A. Not in this case, no.</p> <p>3 Q. Okay. Is that something that's</p> <p>4 referenced here?</p> <p>5 A. No.</p> <p>6 Q. Okay. Now, as you sit here today, can</p> <p>7 you identify in any of the materials you reviewed in</p> <p>8 generating this opinion, any document that would</p> <p>9 indicate Officer Kenny was prohibited from using</p> <p>10 multiple Taser or electronic control device</p> <p>11 deployments?</p> <p>12 A. Other than these warnings that strongly</p> <p>13 encourage not to, that would be it.</p> <p>14 Q. Okay.</p> <p>15 A. As I independently sit here. But again,</p> <p>16 I want to underscore for the record, a Taser was</p> <p>17 never used. This is your expert's opinion. I'm</p> <p>18 just opining that he's wrong.</p> <p>19 Q. I understand that you don't think that</p> <p>20 opinion is relevant, right? Is that what you're</p> <p>21 saying?</p> <p>22 A. Well, there's really a couple issues</p> <p>23 here. Mr. Waller said that they should have used</p> <p>24 multiple applications of the Taser. I don't think</p> <p>25 you go into an exigent circumstance when you think</p>
<p style="text-align: right;">Page 142</p> <p>1 Q. You only opined about multiple?</p> <p>2 A. Correct.</p> <p>3 Q. So without those words, it just says</p> <p>4 minimize repeated exposures, correct?</p> <p>5 A. Correct.</p> <p>6 Q. By saying minimize repeated exposures,</p> <p>7 you agree with me, it doesn't say repeated exposures</p> <p>8 are prohibited, right?</p> <p>9 A. I would agree with that.</p> <p>10 Q. Now, did you assess or analyze or look at</p> <p>11 specifically any of the training materials provided</p> <p>12 to you or the Madison Police Department policies</p> <p>13 about multiple Taser deployments?</p> <p>14 A. I recall looking at, I think, the policy</p> <p>15 of Madison.</p> <p>16 Q. Okay. And does the policy of Madison</p> <p>17 prohibit multiple Taser deployments?</p> <p>18 A. I don't independently recall.</p> <p>19 Q. Okay. Does the defense arrest tactics</p> <p>20 manual you reviewed prohibit multiple Taser</p> <p>21 deployments?</p> <p>22 A. I don't think that version of the -- that</p> <p>23 manual did, but the advisory group in Wisconsin came</p> <p>24 out and recommended that in a separate document.</p> <p>25 Q. Is that a document that you reviewed in</p>	<p style="text-align: right;">Page 144</p> <p>1 somebody is being assaulted. You don't bring a</p> <p>2 Taser to a gun fight. You don't bring it to a knife</p> <p>3 fight.</p> <p>4 Q. Okay.</p> <p>5 A. As your expert said, plan for the worst.</p> <p>6 You don't plan for the worst holding a Taser.</p> <p>7 Q. Okay.</p> <p>8 A. So this, to me, is just a fallacious</p> <p>9 attempt to say well, you should have tased him a</p> <p>10 bunch of times. Well, look at the police executive</p> <p>11 research form. They recommended several years ago</p> <p>12 that TASER come out with a unit that stops after</p> <p>13 five seconds and that unit now exists.</p> <p>14 Q. Okay.</p> <p>15 A. So this runs in the face of all the</p> <p>16 industry recommendations, including the product</p> <p>17 ones.</p> <p>18 Q. Now, are these recommendations very</p> <p>19 recent?</p> <p>20 A. Probably two thousand -- well, the first</p> <p>21 recommendation against multiple applications was in</p> <p>22 2006. Then they came with a report, I believe it</p> <p>23 was -- don't hold me to these days, but around 2010,</p> <p>24 2012. And a couple years ago TASER -- the company</p> <p>25 actually makes what's called the PERF model where</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
145-148

<p style="text-align: right;">Page 145</p> <p>1 the trigger when you pull it will stop, cycling at 2 five seconds. So that's an option now that people 3 can buy. So it's been around for a while, certainly 4 preceding this event. 5 Q. Okay. Now, and I just want to be clear 6 about this. None of the training records you looked 7 at, specifically with respect to Officer Kenny, 8 included a prohibition on multiple uses, right? 9 A. I don't recall reviewing a TASER training 10 lesson plan. 11 Q. Okay. And you don't recall anything from 12 the Madison Police Department policies that 13 prohibited it, right? 14 A. Not independently, no. 15 Q. Okay. So this has been previously 16 identified as Exhibit 22. 17 A. Okay. Thank you. 18 Q. And this is one of the policies you 19 reviewed in preparing your report, correct, sir? 20 A. Correct. 21 Q. Excuse me, correct, Doctor. I apologize. 22 A. That's all right. 23 Q. Now, if you'll go with me to -- you see 24 there's a Bate stamp on the bottom? 25 A. Yes.</p>	<p style="text-align: right;">Page 147</p> <p>1 Q. Okay. Now, and that continues on to the 2 next page, and then the top of the one after that. 3 Do you see that? 4 A. Correct. 5 Q. Now, nothing in the Madison Police 6 Department policy 6-200, the use of nondeadly force, 7 prohibits the use of multiple Taser applications, 8 correct? 9 A. Just give me a second. 10 Q. Absolutely. 11 A. Okay. I've reviewed it. 12 Q. And the question was nothing in this 13 policy prohibits the use of multiple electronic 14 control device deployments, correct? 15 A. Well, I can't answer that because it says 16 you'll use it in accordance with departmental 17 training. And if the training -- if the instructor 18 conducted the training according to his contract 19 with putting forth the current warnings, yes, then 20 that would have been covered. This is a policy. 21 This isn't a procedure. 22 Q. So my question was different, which is: 23 Is there anything in this policy that prohibits the 24 application of multiple Tasers? 25 MR. HALL: Objection to form.</p>
<p style="text-align: right;">Page 146</p> <p>1 Q. To page 4330. 2 A. I don't have a 43 anything. My last page 3 was 4265. 4 MS. HARRELL: Can you tell me 5 specifically what you're looking at? 6 MR. OWENS: This is exhibit -- 7 MS. HARRELL: Twenty-two did you say? 8 MR. OWENS: Yeah, 22, but I may have 9 pulled the wrong exhibit. 10 MR. OWENS: Can we go off the record for 11 a second. 12 (Off the record.) 13 BY MR. OWENS: 14 Q. So this is Exhibit 23 from officer Gary's 15 deposition. And this is the Madison Police 16 Department policy concerning the use of deadly 17 force. And you reviewed this in advance of your 18 deposition today. And the exhibit also includes 19 6-200, the use of nondeadly force, correct? 20 A. Correct. 21 Q. Okay. Now, if you'll go with me to 22 what's Bates stamped as City 4330, you'll see 23 there's the policy here for the electronic and 24 control device use, correct? 25 A. Correct.</p>	<p style="text-align: right;">Page 148</p> <p>1 THE WITNESS: Unless I see the lesson 2 plan because it says it's subject to training. The 3 officer has to do it subject to training. This is a 4 policy, it's not a procedure or a rule. 5 BY MR. OWENS: 6 Q. So is there anything in this policy that 7 prohibits the use of multiple Taser applications? 8 MR. HALL: Objection to form. 9 THE WITNESS: It could if you rely on the 10 training component that says you will use it in 11 accordance with training. 12 BY MR. OWENS: 13 Q. Is there anything on the text of this 14 policy that you see in this exhibit that would 15 prohibit the use of multiple Taser applications? 16 MR. HALL: Objection to form. Asked and 17 answered. 18 MS. HARRELL: Objection. Asked and 19 answered. 20 THE WITNESS: If you're asking is there a 21 sentence that says you can't use it multiple times? 22 BY MR. OWENS: 23 Q. Correct. 24 A. No. 25 Q. All right.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
149-152

<p style="text-align: right;">Page 149</p> <p>1 A. If it goes back to training, possibly.</p> <p>2 Q. But it's not in the text of the policy?</p> <p>3 MR. HALL: Objection to form.</p> <p>4 Argumentative.</p> <p>5 THE WITNESS: It is in the text. It is</p> <p>6 in the text. Counsel, it says on page Bates stamp</p> <p>7 City 4330.</p> <p>8 BY MR. OWENS:</p> <p>9 Q. Sure.</p> <p>10 A. It says, "Deployment and use of the</p> <p>11 electronic control devices will be in accordance</p> <p>12 with departmental training and procedure."</p> <p>13 Q. Okay.</p> <p>14 A. That's a conjunction. It's not "or,"</p> <p>15 it's "and." So if the training says don't do it,</p> <p>16 then the policy would say don't do it.</p> <p>17 Q. Okay. But that sentence that you just</p> <p>18 read me, itself, does not say you cannot use a Taser</p> <p>19 multiple times, right?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. Now, on paragraph 5 in the policy</p> <p>22 you'll see indicates the use of an ECD under the</p> <p>23 following circumstances is prohibited unless exigent</p> <p>24 circumstances are present, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 151</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. So multiple would be prohibited.</p> <p>4 Q. "For coercion or intimidation or to</p> <p>5 escort or prod subjects, to awaken unconscious or</p> <p>6 intoxicated subjects, against subjects who are</p> <p>7 offering only passive resistance"?</p> <p>8 A. You're not going to use it once let alone</p> <p>9 multiple.</p> <p>10 Q. Right. But neither paragraph 5 or 6 say</p> <p>11 anything about single versus multiple, correct?</p> <p>12 A. Six does. It says you're not going to</p> <p>13 use it.</p> <p>14 Q. It says something about between zero and</p> <p>15 infinite numbers because it can never be used; is</p> <p>16 that right?</p> <p>17 A. That's what it says.</p> <p>18 Q. Okay. Now, do you disagree with me that</p> <p>19 the policy itself assumes that multiple Taser</p> <p>20 applications will be appropriate in certain</p> <p>21 instances?</p> <p>22 MS. HARRELL: Objection. Foundation.</p> <p>23 THE WITNESS: I'm sorry?</p> <p>24 BY MR. OWENS:</p> <p>25 Q. Do you agree with me that the policy</p>
<p style="text-align: right;">Page 150</p> <p>1 Q. And then it lists A, B, C and D?</p> <p>2 A. Correct.</p> <p>3 Q. And none of those mention multiple Taser</p> <p>4 deployments, correct?</p> <p>5 A. That's because they're circumstances,</p> <p>6 they're not applications. That doesn't even make</p> <p>7 sense.</p> <p>8 Q. Is multiple Taser applications mentioned</p> <p>9 there, yes or no?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. But it wouldn't be.</p> <p>13 Q. Now, paragraph 6. "The ECD will not be</p> <p>14 used in the following circumstances."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And then it gives A, B, C, D,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. And nothing here prohibits the use of</p> <p>21 multiple Taser applications, correct?</p> <p>22 A. Well, it prohibits the use of it. So not</p> <p>23 only does it prohibit multiple applications, it</p> <p>24 prohibits a single application.</p> <p>25 Q. In these circumstances, right?</p>	<p style="text-align: right;">Page 152</p> <p>1 itself, the one that we're looking at, assumes that</p> <p>2 multiple Taser applications will be appropriate?</p> <p>3 MS. HARRELL: Same objection.</p> <p>4 THE WITNESS: Will be appropriate?</p> <p>5 MR. OWENS: I'll withdraw the question.</p> <p>6 BY MR. OWENS:</p> <p>7 Q. Do you agree with me that the policy that</p> <p>8 we're looking at here indicates that multiple Taser</p> <p>9 applications are not prohibited?</p> <p>10 MR. HALL: Objection to form.</p> <p>11 Go ahead.</p> <p>12 MS. HARRELL: Join.</p> <p>13 THE WITNESS: It doesn't say they're not</p> <p>14 prohibited, but it does talk about more than three</p> <p>15 firing cycles.</p> <p>16 BY MR. OWENS:</p> <p>17 Q. Okay. So you're referring to paragraph</p> <p>18 8, number D, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And that indicates, "Officers shall</p> <p>21 evaluate all subjects against whom an ECD has been</p> <p>22 deployed. The subject shall be medically evaluated</p> <p>23 if" A, B, C. And we're talking about D, "The</p> <p>24 subject has been exposed to three or more ECD firing</p> <p>25 cycles or one continuous firing cycle of 25</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
153-156

<p style="text-align: right;">Page 153</p> <p>1 seconds," right? More.</p> <p>2 A. Correct.</p> <p>3 Q. And you'll agree that assumes that there</p> <p>4 may be circumstances in which a subject could be</p> <p>5 exposed to three or more ECD firing cycles, correct?</p> <p>6 A. As I read that it could be for three or</p> <p>7 more officers.</p> <p>8 Q. Okay. Could it also include the scenario</p> <p>9 that I'm -- that I proposed which is three</p> <p>10 applications?</p> <p>11 A. I don't know.</p> <p>12 Q. So you're able to say yeah, that could be</p> <p>13 three officers, but not three applications?</p> <p>14 A. Well, as it's worded here, exposed to</p> <p>15 three or more firing cycles or one continuous. I</p> <p>16 guess that could include one person. I mean, we're</p> <p>17 talking firing cycles, it doesn't say from whom. It</p> <p>18 could be one person, it could be three people, it</p> <p>19 could be a dozen people.</p> <p>20 Q. A dozen people holding a dozen shots, is</p> <p>21 that what you're assuming?</p> <p>22 A. No. Firing cycle is timestamp, it</p> <p>23 doesn't mean connection. So implied in this is</p> <p>24 there has to be a connection, it has to be a</p> <p>25 completed circuit. So a firing cycle is going to be</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. And would you agree with me that this</p> <p>2 paragraph from this training manual does not</p> <p>3 prohibit multiple applications of an ECD device?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay.</p> <p>6 A. It discourages them but doesn't prohibit</p> <p>7 them.</p> <p>8 Q. Okay. And it says, "Before each</p> <p>9 application of an ECD, as with any other use of</p> <p>10 force, reassess the situation," correct?</p> <p>11 A. Where are you?</p> <p>12 Q. I was in the middle of the paragraph.</p> <p>13 A. Okay. I see. Yes, I think it's the</p> <p>14 beginning of that paragraph is most important. Be</p> <p>15 aware that repeated or prolonged application of an</p> <p>16 ECD can have an additive effect and could cause</p> <p>17 injury, especially in someone whose health is</p> <p>18 already compromised in some way, including by drug</p> <p>19 use, injury or overexertion, as can happen in people</p> <p>20 displaying medically significant behavior."</p> <p>21 Q. So that's a warning, right?</p> <p>22 A. That is a warning.</p> <p>23 Q. Okay. And then the next sentence</p> <p>24 discusses multiple applications, correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 154</p> <p>1 time stamped and it's probably going to timestamp</p> <p>2 five seconds, but we don't know if the circuit's</p> <p>3 been completed. So generally when training like</p> <p>4 this is done, it's talking about completed circuit</p> <p>5 cycles.</p> <p>6 Q. Now, I'm handing you a copy of what's</p> <p>7 been previously marked as Exhibit 1. And this is</p> <p>8 the "Defense and Arrest Tactics" of 2007.</p> <p>9 You're familiar with this?</p> <p>10 A. Yes.</p> <p>11 Q. You reviewed it in advance of your</p> <p>12 deposition today?</p> <p>13 A. Yes.</p> <p>14 Q. And in preparing your report?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And do you mind turning to -- it's</p> <p>17 page 46 if you're looking up the numbers of the</p> <p>18 manual itself or the Bates stamps 56, 57.</p> <p>19 A. Okay.</p> <p>20 Q. Okay. And now page 46 discusses</p> <p>21 electronic control devices, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And do you see the second paragraph here,</p> <p>24 Doctor?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. And that sentence does not prohibit them,</p> <p>2 correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Now, I want to jump back. Sorry, I</p> <p>5 accidentally skipped something, so sorry about the</p> <p>6 false advertising there.</p> <p>7 Going back to Opinion No. 3, Doctor.</p> <p>8 A. Okay.</p> <p>9 Q. You say at the bottom of page 6 in your</p> <p>10 report, "Based on the foregoing testimony, Officer</p> <p>11 Kenny had several credible reasons to believe that</p> <p>12 someone was being attacked inside the residence" --</p> <p>13 A. Correct.</p> <p>14 Q. -- "which necessitated his immediate</p> <p>15 tactical response."</p> <p>16 A. Correct.</p> <p>17 Q. Now, you use the phrase here "several</p> <p>18 credible reasons," correct?</p> <p>19 A. Correct.</p> <p>20 Q. And now are you saying in this sentence</p> <p>21 that you're crediting Officer Kenny's version of</p> <p>22 events?</p> <p>23 A. This is the version of the events.</p> <p>24 Q. All right. His is the only version of</p> <p>25 events in your mind?</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
157-160

<p style="text-align: right;">Page 157</p> <p>1 A. Well, he's the one who identified all the 2 reasons for entering that's in paragraph 2. 3 Q. Okay. So you're saying if his reasons 4 are to be believed, then those are -- those are 5 legitimate reasons that would cause -- constitute an 6 exigency, right? 7 A. Yes. 8 Q. Okay. You're not saying "I believe this 9 actually happened," correct? 10 A. Correct. I'm saying that if what he 11 testified to and what he wrote about is accurate, 12 those are legitimate reasons to enter the building. 13 Q. Okay. 14 A. As an exigent circumstance. 15 Q. Now, we talked a little bit earlier about 16 how you analyze the situations in which there are, 17 you know, multiple accounts. And now assume here 18 that Tony Robinson survived the shooting, and had a 19 version of events to tell himself, and that there 20 was no noise coming from the house, that he was 21 sitting there. Okay? 22 A. Okay. 23 Q. And how would you reconcile the 24 differences -- different version of events? How do 25 you account for that in your methodology?</p>	<p style="text-align: right;">Page 159</p> <p>1 national training standards. If the officer's 2 version of the facts is correct, then his use of 3 force is consistent with national training 4 standards. 5 I think as a person who's coming at this 6 objectively as possible you have to make that 7 analysis on both sides. 8 Q. Okay. Any other reasons you would do it 9 that way? 10 A. Because you don't want to take sides. 11 That is kind of the underlying premise here. You 12 don't want to take sides because the minute you take 13 that side when you have two conflicting versions -- 14 Q. Sure. 15 A. -- is you either deliberately or 16 unintentionally gave credibility to one version and 17 not the other. 18 Q. Right. And that's not your role? 19 A. Exactly. 20 Q. Okay. Now, how does that methodology 21 apply when you have a different hypothetical which 22 is there's the officer's version of events and then 23 there's objective evidence that contradicts it? 24 So if in this situation Officer Kenny 25 said that the shooting happened entirely contained</p>
<p style="text-align: right;">Page 158</p> <p>1 A. Okay. First of all, this is a 2 hypothetical, not the facts as we know. The way I 3 would handle it is, I would take the officer's 4 version and say if the officer's version is reported 5 and found to be correct, these are legitimate 6 reasons for going in. 7 In contrast, if Mr. Robinson's versions 8 are accurate, then the officer did not have exigent 9 circumstances and I'd just come out and say that. 10 But I would give both sides, I'd put it all in the 11 same report. 12 Q. Got it. 13 A. Because it's up to the trier of fact to 14 make that determination, not me. But I would 15 account for if the officer said this and it's 16 accurate, then here's my opinion. And if the 17 officer's version is incorrect and Mr. Robinson in 18 your hypothetical is correct, then this would be the 19 opinion. 20 Q. And why would you do it that way? 21 A. Well, I think -- first of all, within you 22 do the analysis, you have to look at both sides of 23 that. And I've done this in the past where if the 24 arrested person's versions are correct, then the 25 officer's use of force would be outside the scope of</p>	<p style="text-align: right;">Page 160</p> <p>1 within the stairwell, right, but the video here 2 shows that at least part of it happened in video 3 that you could see from outside of the stairwell, 4 how would you take that into account? 5 A. Well, I think the video speaks for 6 itself. I mean, it's -- the decision to use deadly 7 force is the focal point. What constituted the 8 decision to make to use deadly force. As you're 9 using it, I don't think anybody is really paying 10 much attention to where their footsteps are. But, 11 if the video shows say the last shot was fired 12 outside the doorway and he said I was still in the 13 doorway, the video speaks for itself. 14 Q. So in a situation like that, do you still 15 analyze it in the same way as if there was a 16 disagreement between two people if the video is 17 correct, then this is what follows, if the officer 18 is correct, this is what follows or do you do 19 something different? 20 A. It depends on the video. You could 21 have -- first of all, a video is not three 22 dimensional. I'm talking a different situation than 23 this. A video is not three dimensional. So you can 24 have what appears to be in the video, for example, a 25 knee that's put across the neck where another</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
161-164

<p style="text-align: right;">Page 161</p> <p>1 officer's BODYCAM shows it's really across the 2 shoulder, so the angle of the video maybe important. 3 So you have to account for all of those 4 things. But even in those situations, you know, 5 generally when I look at video and the officer's 6 report says he pushed me and that's why I hit him 7 and the video doesn't show that, I will write and 8 say the officer's version of the facts is this, in 9 contrast the video is shown showed this which is a 10 discrepancy, and this goes back to the trier of 11 fact. 12 Here where you had the video at the end 13 of that last few seconds where the officer is 14 outside, that goes to my last opinion about recall, 15 but it doesn't change my analysis on the reason he 16 used force. 17 Q. So in this instance you didn't note a 18 discrepancy between Officer Kenny's account and what 19 you observed in the video, correct? 20 A. There was a discrepancy -- there was a 21 discrepancy, and I tried to address that in the last 22 opinion. 23 Q. And so it's your opinion that Officer 24 Kenny is innocently misremembering, correct? 25 A. My opinion is that there are scientific</p>	<p style="text-align: right;">Page 163</p> <p>1 Q. Easy on the details? 2 A. Yeah. I know there was a little bit of a 3 break in there. 4 Q. Okay. And am I right that you focused on 5 the assessment of whether or not the force was 6 justified only at one instance and that's when it 7 began? 8 A. I focused on the officer's description of 9 why he used the deadly force. 10 Q. Right. And my question is whether or not 11 you analyzed that from only the beginning or whether 12 or not you analyzed that separately along the way? 13 A. Well, each shot is a separate use of 14 force, so that has to be analyzed and explained. 15 Q. Yeah. 16 A. And his explanation was that he was 17 coming down the steps, he had been punched, he was 18 going backwards, he fired, pistol craft today is you 19 shoot until the threat stops. 20 Q. Okay. But at the same time, you know, 21 the officer had to reassess, you know, to be 22 justified in continuing -- continued firing that the 23 threat hadn't stopped, right? 24 A. Yes. 25 Q. And did you say pistol craft?</p>
<p style="text-align: right;">Page 162</p> <p>1 evidence to show that recall is not 100 percent. 2 And I think that the science is clear on that. This 3 is a dynamic situation. There's a lot of stuff 4 going on in a person who's using deadly force. And 5 I think that, you know, the science is pretty clear 6 that officers don't remember everything or maybe 7 remember it differently than what a video might 8 show. 9 Q. So outside of your last Opinion No. 8, do 10 you address the discrepancy between the video and 11 Officer Kenny's account in any other way in your 12 report? 13 A. No. 14 Q. Okay. Why not? 15 A. The decision to use force was already 16 made, and that decision wasn't on video. 17 Q. Okay. Now, the -- you agree with me that 18 the video and other reports show that Officer Kenny 19 fired seven shots, correct? 20 A. That's what was reported, correct. 21 Q. And that there was three shots and then 22 there was a break, three shots and then there was a 23 final shot, correct? 24 A. More or less. I would have to look at 25 the video again to --</p>	<p style="text-align: right;">Page 164</p> <p>1 A. Yes. 2 Q. What do you mean by that? 3 A. Well, modern training today on handguns 4 is you shoot until the threat is stopped. 5 Q. And so by pistol craft you just mean the 6 modern training on handguns? 7 A. Yes, I'm sorry. Pistol craft is a 8 terrible word that's used in that, I'm sorry. 9 Q. I was just more focussing on -- I haven't 10 heard that before. 11 A. Yeah. 12 Q. So where in -- now, let's discuss for a 13 moment your opinion in No. 5, that Mr. Robinson had 14 actively resisted Officer Kenny and engaged in 15 assaulted behavior, correct? 16 A. Correct. 17 Q. And that's based entirely on Officer 18 Kenny's account, right? 19 A. Correct. 20 Q. And Opinion No. 6, "Mr. Robinson was an 21 imminent threat to Officer Kenny because they were 22 engaged in close combat." 23 That's that opinion, correct? 24 A. Correct. 25 Q. And the entire basis for that account is</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
165-168

<p style="text-align: right;">Page 165</p> <p>1 Officer Kenny's version of events, right?</p> <p>2 A. Well, just for clarification, yes, it is</p> <p>3 Officer Kenny's version of the events because there</p> <p>4 is none other, but close combat's defined in the</p> <p>5 DAAT manual as a solid behavior act or resistance</p> <p>6 and so forth in the DAAT manual.</p> <p>7 So, again, going based on this training,</p> <p>8 the only testimony that's available is his. So if</p> <p>9 his testimony is believed by the trier of fact to be</p> <p>10 true and correct, it matches up with his training.</p> <p>11 And that was the basis for it.</p> <p>12 Q. Okay. And so you're saying here's</p> <p>13 Officer Kenny's account, it fits these definitions</p> <p>14 and these are my opinions; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Now, you acknowledged if Officer</p> <p>17 Kenny and Tony Robinson were not engaged in close</p> <p>18 combat, then it would be a different force</p> <p>19 situation, correct?</p> <p>20 A. Not necessarily.</p> <p>21 Q. Okay. If you assume that Officer Kenny</p> <p>22 was not actually hit by Tony Robinson and that</p> <p>23 Officer Kenny fell on the stairs, would that be a</p> <p>24 different situation?</p> <p>25 A. Could be depending how he fell, depending</p>	<p style="text-align: right;">Page 167</p> <p>1 BY MR. OWENS:</p> <p>2 Q. Doctor, in terms of use of force in</p> <p>3 analyzing situations involving use of force or</p> <p>4 deadly force, lets just focus on deadly force, are</p> <p>5 you familiar with the concept of preclusion?</p> <p>6 A. Yes.</p> <p>7 Q. And what is that?</p> <p>8 A. Preclusion is basically a concept that's</p> <p>9 taught about using the appropriate force level,</p> <p>10 trying alternative options if available. Kind of a</p> <p>11 summary of that definition.</p> <p>12 Q. Trying a different force level or</p> <p>13 alternative?</p> <p>14 A. Alternative force level or alternative</p> <p>15 force options.</p> <p>16 Q. So it's that guiding principal that, you</p> <p>17 know, deadly force is to be used as a last resort</p> <p>18 and, you know, where reasonable alternatives are</p> <p>19 available they should be used rather than deadly</p> <p>20 force in the first instance; is that fair?</p> <p>21 A. Well, deadly force -- deadly force is</p> <p>22 kind of a misnomer, actually, because under Graham</p> <p>23 versus Connor, deadly and undeadly force are</p> <p>24 basically combined. It's the force used that's</p> <p>25 reasonable. In the final analysis and the Court</p>
<p style="text-align: right;">Page 166</p> <p>1 the proximity of the parties. Now we're into</p> <p>2 hypotheticals.</p> <p>3 Q. Yeah, that's allowed.</p> <p>4 A. I understand that's allowed, Counsel.</p> <p>5 I'm just saying, I want it clear on the record that</p> <p>6 we're in a hypothetical.</p> <p>7 If we weren't in close combat by</p> <p>8 definition but you had a knife and you were eight</p> <p>9 feet away, which takes it outside the definition,</p> <p>10 that's still a deadly force encounter in my book.</p> <p>11 So I just want to make it clear that we get all the</p> <p>12 variables in place because I don't want the record</p> <p>13 to be muddled on that, that's all.</p> <p>14 Q. Sure. So the hypothetical is that Tony</p> <p>15 Robinson still unarmed, Officer Kenny still armed,</p> <p>16 still a police officer, but now, Officer Kenny falls</p> <p>17 on the stairs and gets up and starts shooting at</p> <p>18 Tony Robinson from distance who is also falling down</p> <p>19 the stairs, that's a different scenario, correct?</p> <p>20 A. If everybody is falling down the stairs,</p> <p>21 I wouldn't consider that a deadly threat.</p> <p>22 Q. Okay. Sorry. One second.</p> <p>23 So the last incident opinion that you</p> <p>24 have in this case -- go off the record for a second.</p> <p>25 (A recess was taken.)</p>	<p style="text-align: right;">Page 168</p> <p>1 will determine whether it's reasonable or not. The</p> <p>2 use of force is subjective, the analysis of force is</p> <p>3 objective.</p> <p>4 Q. So you don't believe that there's a</p> <p>5 concept of deadly force that's different than the</p> <p>6 use of force generally?</p> <p>7 A. No, there's deadly and nondeadly force.</p> <p>8 Q. Sure.</p> <p>9 A. What I'm saying is, the force standard</p> <p>10 applies to both.</p> <p>11 Q. Okay. They're both analyzed under the</p> <p>12 objective reasonableness, is that fair to say?</p> <p>13 A. Correct.</p> <p>14 Q. But there's a difference between using</p> <p>15 force that is deadly and using force that is not</p> <p>16 deadly, right?</p> <p>17 A. Generally speaking, that's correct.</p> <p>18 Q. Officers are trained and -- that certain</p> <p>19 circumstances are appropriate for deadly force and</p> <p>20 certain circumstances are only appropriate for</p> <p>21 nondeadly force, correct?</p> <p>22 A. In large categories, I would agree.</p> <p>23 Q. Right, I mean, that's included in the</p> <p>24 policies of the City of Madison that we were looking</p> <p>25 at a few minutes ago. There's use of deadly force</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
169-172

<p style="text-align: right;">Page 169</p> <p>1 policy which is different than the use of nondeadly 2 force policy? 3 A. Correct. 4 Q. And killing somebody is a lot different 5 than, you know, possibly wounding them, right? 6 A. I think that's a really bad analogy. But 7 it's the use of deadly force either way, it's just 8 one time they died and one they didn't. 9 Q. Sure. 10 A. It's still the use of deadly force. 11 Q. So the use of deadly force which is more 12 likely to result in somebody's death than the use of 13 nondeadly force is a greater level of intrusion, 14 right? 15 MR. HALL: Objection. Foundation. 16 Go ahead. 17 THE WITNESS: If we're looking at deadly 18 force as forces likely to cause death or serious 19 bodily harm versus something that's not, I would 20 agree with you. 21 BY MR. OWENS: 22 Q. And your understanding of how does the 23 concept of preclusion apply to analyzing an 24 officer's use of force? 25 A. Well, we have to start with a distinction</p>	<p style="text-align: right;">Page 171</p> <p>1 all definitions a nondeadly force technique, and 2 when I applied it you fell off the edge of a cliff 3 and died, is it still a nondeadly force technique or 4 was it a deadly force technique, and that's where 5 the confusion comes in. The clarity comes in when 6 we analyze was that reasonable under the 7 circumstances, and that's what the trier of fact has 8 to determine. 9 MR. OWENS: Can we have the question read 10 back, please. 11 (Record read.) 12 BY MR. OWENS: 13 Q. So what I'm wondering, and I understand 14 that the force will be used, evaluated under the 15 reasonableness standard, okay, I understand that. 16 My question is just a clarification as to 17 whether or not the concept of preclusion only 18 applies to the election of particular force option 19 or whether it applies to the use of force itself as 20 well. And it sounds like the answer to your 21 question is no, because the determination is just 22 reasonableness; is that fair? 23 A. I'm not sure I understand your question. 24 Q. Okay. Let me rephrase it. Let's just do 25 it in smaller chunks.</p>
<p style="text-align: right;">Page 170</p> <p>1 and that distinction is between force options and 2 use of force. A lot of people confuse force options 3 as force. Force options are just that. There's 4 various things you can do. So based on when you 5 look at the preclusion concept, you look at what's 6 happening in front of you, what your training is, 7 what equipment you have, what your options are and 8 then the person makes a decision based on what all 9 those variables are. 10 Q. Okay. So I want to just be clear, the 11 preclusion principle applies to officers' decision 12 about which force option to use; is that right? 13 A. Yeah, I would say the force option. 14 Q. Okay. And the force option is governed 15 by preclusion whereas the use of force is analyzed 16 separately? 17 A. No. I think there -- it's kind of a 18 misnomer here. Force continuums, which include 19 force options, are not force standards. They're 20 just options. Whether I use a wrist lock or I use a 21 handgun, at the end of the day, the analysis will be 22 was my force reasonable. Using a wrist lock happens 23 to not be, in most cases, a deadly force option but 24 a lot of people confuse outcomes with the force. 25 So if I use the wrist lock which is by</p>	<p style="text-align: right;">Page 172</p> <p>1 Now, I thought it was your testimony the 2 concept of preclusion applies to an officer's 3 decision to elect which force option to use, and 4 that they should avoid using more significant force 5 than necessary in a particular situation; is that 6 right? 7 A. Correct. 8 Q. Okay. And so when you're analyzing the 9 actual use of force once the force options have been 10 made, that's no longer in the picture, does the 11 concept of preclusion do any work in analyzing the 12 use of force or not? 13 A. Well, you don't make force options, you 14 make force decisions. So I can't answer your 15 question as asked. 16 Q. Okay. So does the election of a 17 particular option influence whether or not the use 18 of force is ultimately reasonable? 19 A. It could depending on the circumstances. 20 Q. Right. So let's get a hypothetical here. 21 An officer responds to a call of disturbance, an 22 unarmed person yelling. Okay? Gets out of his car, 23 pulls out his gun and shoots him. Right? The 24 election to not try any lower level of force would 25 be unreasonable, right?</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
173-176

<p style="text-align: right;">Page 173</p> <p>1 A. Well, I think the force chosen could be 2 determined unreasonable. 3 Q. Right. And so in that situation we can 4 agree that the officer's decision to come out, guns 5 blazing, as in my hypothetical, that the election 6 amongst the number of options is what was 7 unreasonable, correct? 8 A. Well, I think the use of force, the use 9 of deadly force in that situation would more than 10 likely be unreasonable. We don't know what force 11 options he had available, but the fact that he went 12 to the maximum right off, as you say get out with 13 guns blazing, given no other information about the 14 behavior, I think we could all say that's outside 15 the scope of force training. 16 Q. Right. In assessing the situation, you 17 would want to know, I think as you just had 18 indicated, what options the Officer had available to 19 him, right? Did he have a baton, did he have pepper 20 spray, did he have an electronic control device, 21 were other officers on the way, you would want to 22 know that information, correct? 23 A. Those would all be important. 24 Q. And they would all factor into the 25 reasonableness analysis; is that right?</p>	<p style="text-align: right;">Page 175</p> <p>1 reasonable given the totality of the circumstances. 2 And I think we can see the extreme. If I made an 3 obscene gesture to you and you shot me with a 4 handgun, and that's all we had, I think almost 5 everyone would say that totally unreasonable. 6 If I came at you with a knife from two 7 feet away and you shot and killed me, I think people 8 would say, you know, what else could he have done. 9 But then we get into a gray area. Ultimately the 10 officer makes the decision and that's a subjective 11 decision that may, in his mind, involve some 12 thoughts about using other alternatives. 13 Q. Okay. My question is a little different, 14 which is the -- or let's take a step back. 15 Now, Wisconsin police officers are taught 16 the concept of preclusion, right? 17 A. Yes. 18 Q. Officer Kenny was trained in the concept 19 of preclusion, correct? 20 A. Correct. 21 Q. And in analyzing Officer Kenny's use of 22 force relative to his training, you didn't mention 23 that concept, correct? 24 A. Correct. 25 Q. But you did mention the concept of a</p>
<p style="text-align: right;">Page 174</p> <p>1 A. They would factor into the officer's 2 decision making. 3 Q. And then whether or not at a later date a 4 trier of fact determines that use of force is 5 reasonable? 6 A. Correct. 7 Q. Now, in this -- in your report there's no 8 mention of the concept of preclusion, right? 9 A. Correct. 10 Q. Okay. Now, you did mention a concept of 11 force deficit, right? 12 A. Correct. 13 Q. And that's where an officer selects too 14 low of a force option for the particular threat; is 15 that right? 16 A. Correct. 17 Q. And so is there a reason that you 18 mentioned force deficit but not preclusion? 19 A. Force deficit is a concept that was 20 developed after a study looking at force incidents, 21 and Charlie Nessel (Phonetic) on his team looked at 22 that at the University of Florida and published a 23 paper on it. Preclusion isn't taught everywhere. 24 It's not a mandatory required part of an analysis. 25 The end result is was the force</p>	<p style="text-align: right;">Page 176</p> <p>1 force deficit, right? 2 A. Correct. 3 Q. Am I right that a force deficit considers 4 the idea where an officer underuses force in a 5 situation where more would have been required or 6 even justified? 7 A. That's correct. And I just might add to 8 that, it could also mean, as was advanced in that 9 article, that I used the baton which was appropriate 10 for the situation, I just didn't use it hard enough. 11 So I held back when I could have used it at full 12 force. 13 Q. Sure. 14 A. So it has to do sometimes even within the 15 force option that's chosen, you can have a force 16 deficit. 17 Q. Right. Like the election and the 18 application? 19 A. Perfect. 20 Q. Okay. Now, did you mention force deficit 21 and not preclusion because you were more concerned 22 about officers underusing force than them overusing 23 deadly force? 24 A. No, I think -- and I have to look at the 25 context in which I used that. Just let me find it</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
177-180

<p style="text-align: right;">Page 177</p> <p>1 here.</p> <p>2 The context in which I used it was</p> <p>3 referring to injuries to both the officers and</p> <p>4 suspects, and that the fact that when officers use</p> <p>5 too little force they could get injured. And when</p> <p>6 they recalculated, if you will, the suspects</p> <p>7 could -- were more likely to get injured as well.</p> <p>8 That's pretty much the context. And then from that</p> <p>9 is when I went and said that in my opinion Officer</p> <p>10 Kenny used force that was consistent with his</p> <p>11 training.</p> <p>12 Q. Now, in Opinion No. 7, you don't mention</p> <p>13 any of the Madison Police Department policies,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. Why not?</p> <p>17 A. Well, first of all, I wasn't getting into</p> <p>18 any of the Monell issues that those policies may or</p> <p>19 may not have overlapped. I was looking strictly at</p> <p>20 the force event, the force that was chosen, the</p> <p>21 force that was used given the variables that Officer</p> <p>22 Kenny was confronting.</p> <p>23 Q. Okay.</p> <p>24 A. Policies are guidelines, they're not</p> <p>25 constitutional standards.</p>	<p style="text-align: right;">Page 179</p> <p>1 right?</p> <p>2 A. It has examples of that, yes.</p> <p>3 Q. Sure. Now, you didn't cite that portion</p> <p>4 of the DAAT manual in your report, did you?</p> <p>5 A. No.</p> <p>6 Q. Okay. Why not?</p> <p>7 A. It's not a constitutional standard.</p> <p>8 Q. Okay. So now, is Opinion No. 7 just</p> <p>9 about the constitutional standard?</p> <p>10 A. It's not only about the constitutional</p> <p>11 standard, but an Officer's force is analyzed based</p> <p>12 on his training and the Fourth Amendment.</p> <p>13 Q. So why not reference his training?</p> <p>14 A. Because if he violates training, more</p> <p>15 than likely that will be a negligent state court</p> <p>16 issue. I was looking at what the national standard</p> <p>17 for the use of force is.</p> <p>18 Q. Okay. So should we just scratch training</p> <p>19 out of Opinion No. 7, then?</p> <p>20 A. No, because he was trained in Graham</p> <p>21 versus Connor.</p> <p>22 Q. Okay.</p> <p>23 A. That's part of the DAAT training.</p> <p>24 Q. Okay. So you're saying that part of the</p> <p>25 DAAT training discusses Graham, but not the part</p>
<p style="text-align: right;">Page 178</p> <p>1 Q. So I guess for the question -- my</p> <p>2 question is: Your Opinion 7, I thought it had to do</p> <p>3 with whether or not that Officer Kenny acted</p> <p>4 consistent with his training and national use of</p> <p>5 force standards, that wouldn't include whether or</p> <p>6 not he followed the policies of the City of Madison?</p> <p>7 A. His training was on the DAAT manual.</p> <p>8 Q. Okay.</p> <p>9 A. His training was at the academy and the</p> <p>10 national force standards apply.</p> <p>11 Q. And he was also trained to follow the</p> <p>12 policies of the City of Madison, right?</p> <p>13 A. Correct.</p> <p>14 Q. That's what made him a certified officer,</p> <p>15 right?</p> <p>16 A. No, his passing the academy made him a</p> <p>17 certified officer, had nothing to do with the</p> <p>18 policies of Madison.</p> <p>19 Q. Okay. So -- fair enough. Let's talk</p> <p>20 about this in terms of the DAAT manual.</p> <p>21 Now, the DAAT manual includes the use of</p> <p>22 deadly force section, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And it outlines situations in which use</p> <p>25 of force -- use of deadly force is appropriate,</p>	<p style="text-align: right;">Page 180</p> <p>1 that describes deadly force specifically?</p> <p>2 A. Well, you'd have to show me specifically</p> <p>3 what you're referencing.</p> <p>4 Q. Well, I'm just wondering why you didn't</p> <p>5 mention the use of deadly force policy from the DAAT</p> <p>6 manual?</p> <p>7 MR. HALL: Objection to form. Asked and</p> <p>8 answered.</p> <p>9 THE WITNESS: Well, first of all, the</p> <p>10 DAAT manual doesn't have a use of force policy.</p> <p>11 BY MR. OWENS:</p> <p>12 Q. Okay.</p> <p>13 A. The DAAT manual only has suggestions and</p> <p>14 guidance on the use of force.</p> <p>15 Q. Okay. Well, you would agree there that</p> <p>16 the use of deadly force is only justified in certain</p> <p>17 circumstances, right?</p> <p>18 A. I would agree with that.</p> <p>19 Q. And the DAAT manual is the training</p> <p>20 provided to Officer Kenny about what those</p> <p>21 circumstances are?</p> <p>22 A. No.</p> <p>23 Q. No? Why not?</p> <p>24 A. DAAT manual doesn't cover every</p> <p>25 circumstance.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
181-184

<p style="text-align: right;">Page 181</p> <p>1 Q. Okay. It's some of the training Officer 2 Kenny was provided; is that right? 3 A. Some of the training and some of the 4 circumstances. He was given the principles, the 5 principles on the use of force. The application of 6 those principles he put together based on the 7 circumstances. 8 Q. So in Opinion No. 7, you -- Officer 9 Kenny's use of force was consistent with his 10 training? 11 A. Correct. 12 Q. That's a part of your opinion. Okay. 13 And by training, please identify every 14 document that you are referring to to support your 15 opinion that he was acting consistent with his 16 training, what are you referring to? 17 A. The DAAT manual. 18 Q. Okay. Anything else that you're 19 referring to? 20 A. It was consistent with -- from a training 21 perspective of the DAAT manual. 22 Q. Okay. And you're not referring to the 23 Madison Police Department policies, we can throw 24 those out the window? 25 A. No, I'm not throwing them out the window,</p>	<p style="text-align: right;">Page 183</p> <p>1 Other than this, the DAAT manual, is 2 there any other particular training document that 3 you're referring to for this opinion? 4 A. Other than the 4612 document -- 5 Q. Well, that's part of this. 6 A. Right. And that would be it. 7 Q. Okay. That's all I wanted to know. The 8 basis for the training part of the opinion is just 9 this manual? 10 A. Correct. 11 Q. Clear? 12 A. Clear. 13 Q. All right. Now, you'll agree that the 14 use of deadly force, and I think it's pages 40 -- 15 excuse me, it starts on 67 of the manual. 16 A. Okay. 17 Q. And so it's your opinion and testimony 18 that this here is sufficiently similar to the other 19 materials that your -- you referenced that they can 20 all be sort of analyzed together without any 21 significant difference? 22 A. That's a fair statement. 23 Q. Okay. Now, if you'll go to page 68, the 24 next page. 25 Did the Wisconsin law, which is mentioned</p>
<p style="text-align: right;">Page 182</p> <p>1 but I haven't seen a lesson plan on what was trained 2 in those policies. 3 Q. Okay. So the only document that you're 4 referring to for your opinion about him acting 5 consistent with his training is the DAAT manual? 6 A. The DAAT manual and Fourth Amendment 7 standards and analysis. 8 Q. Okay. 9 A. I cited in here -- maybe this will make 10 it easier, maybe not. I cited lethal and less 11 lethal force by Judge Plitt. And Judge Plitt went 12 through and laid out the elements for the use of 13 force, deadly and nondeadly. 14 Q. Okay. 15 A. The DAAT manual has similar references, 16 and I cited that as Wisconsin force training 17 standards. I also went and cited on page 10 of my 18 report that officers may use force legitimately when 19 it's needed to achieve control in specific 20 situations, and cited the city Document 4612. I 21 don't think I have to recite paragraph by paragraph 22 every word that's in the DAAT manual, by referencing 23 it I think is fine. 24 Q. Okay. I'm asking -- just maybe it's so 25 obvious its going by.</p>	<p style="text-align: right;">Page 184</p> <p>1 here, play any role in your analysis at all? 2 A. The only thing it played in is it's part 3 of the training that the officer received. 4 Basically it parallels a lot of what page 67 talked 5 about. 6 Q. Well, does page 67 say anything that the 7 actor may not intentionally use force which is 8 intended or likely to cause death or great bodily 9 harm unless the actor reasonably believes that such 10 force is necessary to prevent imminent threat or 11 great bodily harm to himself or herself, is that 12 here? 13 A. Is that here where? 14 Q. On page 67. 15 A. No, that's not necessarily on 67. 16 Although, under the U.S. Constitution, the second 17 bullet it says whether the suspect poses immediate 18 threat to the safety of officers and others. So 19 there's some similarity. 20 Q. Okay. 21 A. The Wisconsin statute spells it out that 22 forces necessary to prevent imminent death or great 23 bodily harm to the Officer or somebody else. 24 Q. So is there a reason that you didn't 25 analyze the use of force under the Wisconsin</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
185-188

<p style="text-align: right;">Page 185</p> <p>1 standard that would have been applicable here?</p> <p>2 MR. HALL: Objection to form.</p> <p>3 THE WITNESS: No, I referenced his</p> <p>4 training and this is part of that training.</p> <p>5 BY MR. OWENS:</p> <p>6 Q. Okay. So I think this is included in</p> <p>7 your opinion. Here was which we've discussed a</p> <p>8 little bit previously about not looking at the</p> <p>9 situation, you know, with 20/20 hindsight but from</p> <p>10 the officer's perspective there at the time the</p> <p>11 incident is occurring.</p> <p>12 And you agree that part of the</p> <p>13 information the officer has is that, you know, which</p> <p>14 he sees when he arrives at the scene, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And part of the information that he has</p> <p>17 is that which is communicated to him over dispatch,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Part of that information is the</p> <p>21 information that, you know, is on his computer as</p> <p>22 well, right?</p> <p>23 A. Correct.</p> <p>24 Q. And you didn't see anything here that</p> <p>25 made you think that Officer Kenny didn't have time,</p>	<p style="text-align: right;">Page 187</p> <p>1 understand how to parse this. And I want to know</p> <p>2 why it's not a fourth factor as opposed to an</p> <p>3 element of the third factor because it doesn't</p> <p>4 really seem to me that the circumstance surrounding</p> <p>5 the seizure is the same thing as what crime had been</p> <p>6 committed?</p> <p>7 A. That's why it's an element.</p> <p>8 Q. Of?</p> <p>9 A. Of the analysis.</p> <p>10 Q. Where does it fit in the analysis?</p> <p>11 A. It's the umbrella. It's were the</p> <p>12 circumstances tense, rapidly evolving, uncertain.</p> <p>13 As it says here, "Were the circumstances surrounding</p> <p>14 the seizure of Mr. Robinson tense, uncertain and</p> <p>15 rapidly evolving."</p> <p>16 Q. I understand that. And all I'm trying to</p> <p>17 do is figure out the difference between what you've</p> <p>18 identified as factors and then there's an element.</p> <p>19 So is the element an umbrella in which, you know,</p> <p>20 the factors fall under or is it like a fourth</p> <p>21 factor?</p> <p>22 A. I guess some people teach it as four</p> <p>23 factors. Some people just hang out the tense and</p> <p>24 rapidly event occurring over here. The way I was</p> <p>25 trained in it, it was an element. It wasn't one of</p>
<p style="text-align: right;">Page 186</p> <p>1 once he parked his car, to check the notes, right?</p> <p>2 A. I don't recall seeing anything like that.</p> <p>3 Q. Okay. And you agree that officers, you</p> <p>4 know, are trained to pay attention to the details</p> <p>5 that they're given before they arrive on the scene</p> <p>6 because it could be important to figuring out what</p> <p>7 the best way to assess the situation is, right?</p> <p>8 A. Generally that's true.</p> <p>9 Q. And, I mean, you've given presentations</p> <p>10 and included in those presentations the importance</p> <p>11 of paying attention to the dispatch information,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Nothing's changed about those</p> <p>15 opinions?</p> <p>16 A. No, if it's -- if you have the time,</p> <p>17 certainly it's important to do that.</p> <p>18 Q. Okay. The account that you sort of run</p> <p>19 through it, you got these three factors and then</p> <p>20 you've got an element, right? So you got Factor 1,</p> <p>21 immediate threat to Kenny and/or others. You've got</p> <p>22 actively resist arrest, crimes have been committed,</p> <p>23 and then you have an element.</p> <p>24 Now, how did the element interact with</p> <p>25 the other three factors? I'm just trying to</p>	<p style="text-align: right;">Page 188</p> <p>1 the factors, it was -- it was this other piece that</p> <p>2 kind of goes around it, kind of is -- everything is</p> <p>3 operating inside that environment.</p> <p>4 This is more an environmental overall.</p> <p>5 You could call it a Factor 4, call it whatever you</p> <p>6 want. I mean, it's just the way I presented it in</p> <p>7 here that we have Factor 1, we have Factor 2, we</p> <p>8 have Factor 3, and then the element is this all</p> <p>9 encompassing environmental aspect that influences</p> <p>10 the three factors.</p> <p>11 Q. Okay. Does the availability of backup</p> <p>12 affect any of that analysis?</p> <p>13 A. Depends on the circumstances.</p> <p>14 Q. And how could it?</p> <p>15 A. Officer Kenny said the reason he didn't</p> <p>16 wait for backup was because he thought somebody was</p> <p>17 being assaulted and that created an exigent</p> <p>18 circumstance that, in his opinion, required him to</p> <p>19 go inside and handle. Absent that, I think backup</p> <p>20 that's within a short time frame away, absent that</p> <p>21 exigent circumstance, would have been more than</p> <p>22 likely he would have waited for that backup and then</p> <p>23 they would have -- maybe he'd still gone in by</p> <p>24 himself, but there would have at least been backup</p> <p>25 there.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
189-192

<p style="text-align: right;">Page 189</p> <p>1 And I think he testified to that, you</p> <p>2 know, he went in based on the exigent circumstance</p> <p>3 that he perceived at the time. And I think he even</p> <p>4 explained something about why he didn't wait for</p> <p>5 backup.</p> <p>6 Q. And you don't fault Officer Kenny for,</p> <p>7 you know, pointing to his training indicating that</p> <p>8 when you're responding to either what he suspects</p> <p>9 would be a mental health event or excited delirium</p> <p>10 or agitated chronic --</p> <p>11 A. Chaotic.</p> <p>12 Q. An agitated chaotic event that he'd been</p> <p>13 trained to wait for backup?</p> <p>14 A. Well, I think he's been trained to wait</p> <p>15 for backup, but I think we're confusing something</p> <p>16 here and for the record, I want to make it clear.</p> <p>17 The call he was sent on is not the</p> <p>18 call -- or the event he responded to. The fact that</p> <p>19 you get dispatched for some guy who is out here on</p> <p>20 the street maybe yelling and acting bizarre is far</p> <p>21 different than when you hear noises and think</p> <p>22 somebody's being battered and beaten upstairs.</p> <p>23 That's a totally different incident than the call</p> <p>24 for service.</p> <p>25 And I think what happens many times is</p>	<p style="text-align: right;">Page 191</p> <p>1 and I've got to take care of it right now.</p> <p>2 I'm not saying you flush that and get</p> <p>3 away from it, but it's not the primary issue right</p> <p>4 now. That -- that call changed, that call changed</p> <p>5 from go check out this bizarre behavior to there's</p> <p>6 something different than I'm perceiving.</p> <p>7 Q. So is there a hierarchy of factors that</p> <p>8 officers can consider or are they required to sort</p> <p>9 of consider the totality?</p> <p>10 A. You consider the totality of the</p> <p>11 circumstance.</p> <p>12 Q. Okay.</p> <p>13 A. And I think that's what he did.</p> <p>14 Q. And, again, that's based upon, you know,</p> <p>15 his statement, his interview and his testimony,</p> <p>16 right?</p> <p>17 A. Yeah. This is a tragic event, I don't</p> <p>18 think anybody would deny that, but we don't have</p> <p>19 Mr. Robinson's testimony. So that's all I can rely</p> <p>20 on.</p> <p>21 Q. Sure. But, you know, if you acknowledge</p> <p>22 that the analysis of the use of force would be</p> <p>23 different, you know, if Officer Kenny -- excuse me.</p> <p>24 You acknowledge that the analysis of the</p> <p>25 use of force would be different if there were an</p>
<p style="text-align: right;">Page 190</p> <p>1 that people get hung up on this call for service oh,</p> <p>2 it was just kids playing in the park. Yeah, until</p> <p>3 one of the kids pointed a gun at a cop, that changed</p> <p>4 that. And I think that's what we have here. Yes,</p> <p>5 you're called for service over here.</p> <p>6 As serious as it may have been or is just</p> <p>7 go check it out, dynamically changed when the</p> <p>8 officer said, "I heard somebody say something and it</p> <p>9 sounded like people were getting assaulted," and I</p> <p>10 believe that was an exigent circumstance. That's</p> <p>11 far different than a guy yelling and being partially</p> <p>12 clothed over here.</p> <p>13 Q. So does all the information the officer's</p> <p>14 been previously told just fall out the window?</p> <p>15 A. I think at that point it takes a second</p> <p>16 seat.</p> <p>17 Q. So the officer should just ignore the</p> <p>18 fact that he's been told that somebody might have</p> <p>19 ingested drugs or be acting really bizarrely?</p> <p>20 A. No, I don't think you should ignore that.</p> <p>21 Q. So it's still part of the analysis?</p> <p>22 A. It's there, but it doesn't take</p> <p>23 precedence at this point. The precedence is it</p> <p>24 appears to me, sounds to me, I perceive it to me</p> <p>25 that I have an active problem inside this building</p>	<p style="text-align: right;">Page 192</p> <p>1 alternative account provided by the decedent, right?</p> <p>2 A. There could be. Well, first of all, by</p> <p>3 the decedent, Mr. Robinson.</p> <p>4 Q. Sure.</p> <p>5 A. If Mr. Robinson were alive, he may also</p> <p>6 say, "You know what, everything he said is true."</p> <p>7 We can't discount that factor either. I mean,</p> <p>8 sometimes suspects say, "Yeah, I said what he said,</p> <p>9 I did what he said I did."</p> <p>10 Q. Sure. That's not really meaningful.</p> <p>11 A. It's not meaningful to your hypothetical.</p> <p>12 Q. So you agree that if, you know, the</p> <p>13 person involved in the force incident had not passed</p> <p>14 away and gave a different account of how it took</p> <p>15 place, that could change the analysis, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And the factors here if there was</p> <p>18 evidence -- if you remove them, so you got Factor 1,</p> <p>19 2 and 3, right, you know?</p> <p>20 A. Right.</p> <p>21 Q. If you take away Factor 2, that would</p> <p>22 change the analysis. If the answer goes from a yes</p> <p>23 to a no, that would be a different situation, right?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. And I want to just be clear about</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
193-196

<p style="text-align: right;">Page 193</p> <p>1 this. You include on Factor 3 that there was a</p> <p>2 resisting arrest. You believe that he had committed</p> <p>3 that crime?</p> <p>4 A. I'm just going by what the officer said.</p> <p>5 Q. Okay. And what is your understanding of</p> <p>6 what it would mean to resist arrest?</p> <p>7 A. Well, if you punch the officer and</p> <p>8 knocked him down the stairs and came at him, at that</p> <p>9 point you would be placed under arrest. I mean,</p> <p>10 there's resisting behavior at the top of the stairs,</p> <p>11 according to the officer's testimony, and that's a</p> <p>12 battery on the officer, the arrest follows and it</p> <p>13 would be resisting.</p> <p>14 Q. And am I right that maybe this is a VENN</p> <p>15 diagram in the sense that your opinion is that the</p> <p>16 battery on the officer is -- or the strike to the</p> <p>17 officer is both at the same time a battery and a</p> <p>18 crime of resisting arrest simultaneously?</p> <p>19 A. No, not simultaneously but the seizure of</p> <p>20 the person is certainly a seizure for purposes of</p> <p>21 the fourth amendment. So on the first shot goes</p> <p>22 that's a seizure.</p> <p>23 Q. I think we may be confused. Let's back</p> <p>24 up. I was talking about the crimes that had been</p> <p>25 committed by Mr. Robinson.</p>	<p style="text-align: right;">Page 195</p> <p>1 Q. Okay. Now, I think that you're</p> <p>2 mentioning that the seizure begins once the officer</p> <p>3 begins to use force. In this case there was only</p> <p>4 deadly force applied. And so from the first shot,</p> <p>5 right?</p> <p>6 A. Well, from a force perspective, deadly</p> <p>7 force was used. From a force option, there were two</p> <p>8 other options used, deadly force being the third</p> <p>9 option chosen.</p> <p>10 Q. You mean -- I think you mean, available</p> <p>11 not used; is that what you meant?</p> <p>12 A. No, I chose my words right.</p> <p>13 MR. OWENS: Can you read that back,</p> <p>14 please.</p> <p>15 (Record read.)</p> <p>16 BY MR. OWENS:</p> <p>17 Q. What other force options were used or did</p> <p>18 you mean available?</p> <p>19 A. These were used. Kenny was in uniform</p> <p>20 and he gave a verbal police.</p> <p>21 Q. Okay.</p> <p>22 A. So those are force options that are</p> <p>23 taught by Wisconsin. Officer presence. He was in</p> <p>24 uniform. He was in a marked patrol car. He said --</p> <p>25 and again, this is what the officer's testimony is.</p>
<p style="text-align: right;">Page 194</p> <p>1 A. Okay.</p> <p>2 Q. And as you have it for Factor 3. And</p> <p>3 what I was wondering is whether or not the battery</p> <p>4 on the officer is the same at the same time, you</p> <p>5 know, say he hits the officer that at the same time</p> <p>6 means he's resisting arrest?</p> <p>7 A. Well, he would have been under arrest</p> <p>8 prior to that, so it wouldn't be resisting. But</p> <p>9 once he struck the officer, the officer would</p> <p>10 have -- I mean, the arrest at that point, should</p> <p>11 have been forthcoming. And then it would have been</p> <p>12 resisting. I mean, he -- the officer said he pushed</p> <p>13 him down the stairs, punched him and he started -- I</p> <p>14 forget, stair step or back step or some term he used</p> <p>15 for that going down the stairs. So to me that's</p> <p>16 resisting. He's resisting the officer at that</p> <p>17 point.</p> <p>18 Q. Okay. So I guess, and I'm -- I just want</p> <p>19 to be clear. Is it like a VENN diagram again where</p> <p>20 the punch simultaneously means you should be under</p> <p>21 arrest and then, therefore, once you punch an</p> <p>22 officer you're also resisting arrest?</p> <p>23 A. I don't think it's simultaneously, I</p> <p>24 think it's shortly thereafter. But yes, he would be</p> <p>25 placed under arrest.</p>	<p style="text-align: right;">Page 196</p> <p>1 I said police, Madison police or whatever was said,</p> <p>2 those are two force options. Then we have the force</p> <p>3 that's used which would be the deadly force option.</p> <p>4 Q. Okay.</p> <p>5 A. That's what I was referring to.</p> <p>6 Q. Sure.</p> <p>7 A. I wasn't trying to be --</p> <p>8 Q. No, I --</p> <p>9 MR. OWENS: Can we take one second.</p> <p>10 (Off the record.)</p> <p>11 BY MR. OWENS:</p> <p>12 Q. Let's discuss. The wearing of a uniform</p> <p>13 is itself a use of force?</p> <p>14 A. No, no. When you're talking force</p> <p>15 options, the first level of force option that's</p> <p>16 discussed is usually officer presence. And if --</p> <p>17 and I'll use myself as a suspect. If I'm doing</p> <p>18 something that's -- that I know isn't right and the</p> <p>19 four of you show up in uniform, I'll probably walk</p> <p>20 away, that's presence.</p> <p>21 Q. Got it.</p> <p>22 A. Then when I announce police, that's a</p> <p>23 second option.</p> <p>24 Q. Okay.</p> <p>25 A. So all of that can be, depending on the</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
197-200

<p style="text-align: right;">Page 197</p> <p>1 circumstance, a quote, use of force.</p> <p>2 Q. Yeah.</p> <p>3 THE WITNESS: Is that still --</p> <p>4 MR. OWENS: It's pretty bad. It actually</p> <p>5 may be worse, if you go up maybe that will help.</p> <p>6 THE WITNESS: Is that better?</p> <p>7 MR. OWENS: That is much better. Thank</p> <p>8 you. It was actually worse. It was directly in my</p> <p>9 eyes.</p> <p>10 For the record, we are referring to the</p> <p>11 curtains being adjusted.</p> <p>12 BY MR. OWENS:</p> <p>13 Q. Okay. So in order for officer presence</p> <p>14 to be a used force option, the suspect or individual</p> <p>15 whom it's being deployed against, I guess would have</p> <p>16 to be aware that the officers were present, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And for the announcement of office</p> <p>19 to be force option employed, the person who it's,</p> <p>20 you know, quote/unquote, deployed against would have</p> <p>21 to be aware of the announcing officer, correct?</p> <p>22 A. Correct.</p> <p>23 Q. So if someone were, you know, had their</p> <p>24 back or didn't see the officers approaching their</p> <p>25 uniform, that wouldn't be force employed, right?</p>	<p style="text-align: right;">Page 199</p> <p>1 A. Let me just qualify that just for the</p> <p>2 record. It was still deployed, it just wasn't</p> <p>3 effective.</p> <p>4 Q. So any time an officer walks around in a</p> <p>5 uniform, they're deploying their presence force</p> <p>6 option?</p> <p>7 A. I would hope so.</p> <p>8 Q. So we're sort of getting micro</p> <p>9 aggressions from police officers any time they're</p> <p>10 walking around?</p> <p>11 A. No, no, no. If you're in uniform and I</p> <p>12 see you're in uniform, I recognize you're present,</p> <p>13 that's all. If I'm blind, you could be two inches</p> <p>14 in front of me and I don't know it. All I'm saying</p> <p>15 is if the officer is in uniform and is seen, that's</p> <p>16 a recognition of presence.</p> <p>17 Q. Got it. And they have to recognize that</p> <p>18 the officer is an officer, right?</p> <p>19 A. Right. If I'm in plain clothes or</p> <p>20 dressed like we are, for instance, if I looked at</p> <p>21 you, just a nice shirt and, you know, baseball cap</p> <p>22 turned backwards and a beard and a mustache, I may</p> <p>23 go "Hey, he's not a cop, I don't have to listen to</p> <p>24 him."</p> <p>25 Q. You might even say he's not a lawyer.</p>
<p style="text-align: right;">Page 198</p> <p>1 A. Correct.</p> <p>2 Q. Or if they maybe had their headphones on</p> <p>3 and were, you know, listening to some music and</p> <p>4 didn't hear them say "hey, police," that use of</p> <p>5 force would not be employed, correct?</p> <p>6 A. Correct.</p> <p>7 Q. So if Tony Robinson didn't see Officer</p> <p>8 Kenny and if he didn't hear Officer Kenny or if</p> <p>9 Officer Kenny didn't announce, then those first two</p> <p>10 options wouldn't have been employed; is that right?</p> <p>11 A. If he didn't hear him, I would agree with</p> <p>12 that, but when you punch a cop in the face, I would</p> <p>13 think you saw him because you usually look at what</p> <p>14 you're punching. So that would be my only</p> <p>15 qualification on that.</p> <p>16 Q. Okay. So if Tony Robinson didn't see</p> <p>17 Officer Kenny, then the officer presence, the</p> <p>18 uniform wouldn't have been --</p> <p>19 A. Right. If he didn't see him at all.</p> <p>20 Q. Now, if officer -- excuse me. If Tony</p> <p>21 Robinson didn't hear or Officer Kenny didn't</p> <p>22 announce, then that force option wouldn't have been</p> <p>23 deployed, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 200</p> <p>1 A. And it may turn out just the opposite</p> <p>2 that you were an undercover officer and yeah, I</p> <p>3 better listen to you. So yeah, that's right.</p> <p>4 Q. So what it requires from the suspect's</p> <p>5 perspective is recognition that the Officer is an</p> <p>6 officer in uniform, right?</p> <p>7 A. Well, for it to be effective. The</p> <p>8 officer may not know it, that it wasn't effective,</p> <p>9 but it's like an officer yells at a person who is</p> <p>10 deaf, as far as the Officer knows, now he or she may</p> <p>11 have to consider maybe this guy is deaf.</p> <p>12 Q. Right.</p> <p>13 A. And you got to weigh that against the guy</p> <p>14 is ignoring me or whatever.</p> <p>15 Q. Right. So if the Officer had been told</p> <p>16 when they were dispatched to the scene hey, you're</p> <p>17 responding to a scene of a guy who is deaf, that</p> <p>18 would be something that they should take into</p> <p>19 account, right?</p> <p>20 A. That would be an important variable, yes.</p> <p>21 Q. And if the officer were told, hey, this</p> <p>22 person may be impaired and isn't responding to our</p> <p>23 talking to him, that would be something to consider</p> <p>24 as well, right?</p> <p>25 A. Could be.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
201-204

<p style="text-align: right;">Page 201</p> <p>1 Q. Now, focusing on page 11 of your report,</p> <p>2 you talk about Officer Kenny's force options were</p> <p>3 limited because of the doorway and the stair space,</p> <p>4 right?</p> <p>5 A. Correct.</p> <p>6 Q. Now, I don't think there's any dispute</p> <p>7 that Officer Kenny was not in the stairwell when he</p> <p>8 fired the last shot, right?</p> <p>9 A. Correct.</p> <p>10 Q. So this wouldn't apply to that?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. Now, you didn't issue any opinions</p> <p>13 specifically about shot No. 7, right?</p> <p>14 A. Correct.</p> <p>15 Q. But you would agree that you observed in</p> <p>16 the video that, you know, at that point there was no</p> <p>17 more chance of falling down the stairs?</p> <p>18 A. Correct.</p> <p>19 Q. And now, just a clarification on this</p> <p>20 paragraph. You said that the ECW is not recommended</p> <p>21 because Mr. Robinson was in an elevated position?</p> <p>22 A. Correct.</p> <p>23 Q. And this is you're using elevated</p> <p>24 position here as the above, not like a heightened</p> <p>25 state; is that correct?</p>	<p style="text-align: right;">Page 203</p> <p>1 A. No. I have a master of business</p> <p>2 administration.</p> <p>3 Q. And where is that from?</p> <p>4 A. That is from Babson College, B-a-b-s-o-n.</p> <p>5 Q. Where is that?</p> <p>6 A. Wellesley, Massachusetts.</p> <p>7 Q. And then what -- and so that was a</p> <p>8 master's in business administration?</p> <p>9 A. Right.</p> <p>10 Q. And the MS was in what subject again, I'm</p> <p>11 sorry?</p> <p>12 A. Public relations and communication.</p> <p>13 Q. Thank you.</p> <p>14 A. That was at Boston University. And I</p> <p>15 have a third master's, postdoctoral master's, master</p> <p>16 of arts degree in career and technical education,</p> <p>17 and that's from California State University, San</p> <p>18 Bernardino.</p> <p>19 Q. Santa Barbara or San Bernardino?</p> <p>20 A. San Bernardino.</p> <p>21 Q. Oh, the desert.</p> <p>22 A. Yeah, wish it was Santa Barbara.</p> <p>23 Q. And you got your Ph.D.?</p> <p>24 A. At Walden University.</p> <p>25 Q. And that's in Minnesota?</p>
<p style="text-align: right;">Page 202</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And you say "see TASER warnings,"</p> <p>3 are those the same TASER warnings earlier in the</p> <p>4 report?</p> <p>5 A. Yes.</p> <p>6 Q. Now, is there a different part of them</p> <p>7 that you didn't put into the report itself?</p> <p>8 A. It probably was a different part that</p> <p>9 this warns against elevated platforms.</p> <p>10 Q. Okay. And the concern with elevated</p> <p>11 platforms is people might fall off of them?</p> <p>12 A. Yes.</p> <p>13 Q. Now, Doctor, I know you have an extensive</p> <p>14 educational background and I won't -- we won't go</p> <p>15 through it all, but let's summarize it a little bit</p> <p>16 for the record.</p> <p>17 What was your undergraduate degree in?</p> <p>18 A. Criminal justice.</p> <p>19 Q. Okay. And what was your first graduate</p> <p>20 degree in after that?</p> <p>21 A. Public relations and communication.</p> <p>22 Q. And what level of degree was that?</p> <p>23 A. Master of science.</p> <p>24 Q. And then I think you have another master</p> <p>25 of science; is that right?</p>	<p style="text-align: right;">Page 204</p> <p>1 A. Correct.</p> <p>2 Q. And what subject was that in?</p> <p>3 A. Applied management and decision sciences.</p> <p>4 Q. And Doctor, you're not a psychologist,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. You're not an experimental psychologist,</p> <p>8 right?</p> <p>9 A. Correct.</p> <p>10 Q. And are you an expert in memory</p> <p>11 perception?</p> <p>12 A. Not from a psychological viewpoint, no.</p> <p>13 Q. Okay.</p> <p>14 A. More of literature, but I've not</p> <p>15 conducted any scientific experiments.</p> <p>16 Q. But you don't hold yourself out as an</p> <p>17 expert in memory and cognition perception, do you?</p> <p>18 A. No.</p> <p>19 Q. You haven't been trained formally in that</p> <p>20 field?</p> <p>21 A. Correct.</p> <p>22 Q. Now, the last opinion you have in this</p> <p>23 case concerns postincident; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Before we discuss your Opinion No. 8,</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
205-208

<p style="text-align: right;">Page 205</p> <p>1 postincident opinion, you recall the discussion --</p> <p>2 seems like a lifetime ago now. Where we had a</p> <p>3 discussion about reasonable degree of scientific</p> <p>4 certainty and reasonable degree of professional</p> <p>5 certainty?</p> <p>6 A. Correct.</p> <p>7 Q. Am I right that a reasonable degree of</p> <p>8 scientific certainty is a greater level of</p> <p>9 certainty?</p> <p>10 A. Compared to?</p> <p>11 Q. The reasonable degree of professional</p> <p>12 certainty.</p> <p>13 A. I think scientific certainty has a</p> <p>14 quantitative element to it that can be interpreted</p> <p>15 as more higher level provided the research is</p> <p>16 correct. I mean, you can have scientific research</p> <p>17 invalid, but if the scientific research meets the</p> <p>18 criteria of say the theory of generalize ability and</p> <p>19 a number of other statistical concepts and then</p> <p>20 correct tests are done, yes.</p> <p>21 Q. Okay. So Opinion 8 is that stressful</p> <p>22 events, such as the use of deadly force, do have an</p> <p>23 impact on witness recall.</p> <p>24 A. Correct.</p> <p>25 Q. And part of that is contrary to</p>	<p style="text-align: right;">Page 207</p> <p>1 A. I didn't print out this whole --</p> <p>2 Q. I have it.</p> <p>3 A. -- article because I -- it's on there.</p> <p>4 So I just brought that.</p> <p>5 Q. Got it. Great.</p> <p>6 What else is in the box, if you don't</p> <p>7 mind me?</p> <p>8 MR. HALL: Let me. There's some</p> <p>9 correspondence. We'll go off the record.</p> <p>10 (A discussion was held off the record.)</p> <p>11 BY MR. OWENS:</p> <p>12 Q. And so you got here the -- you got the</p> <p>13 USBs which were sent to you from Mr. Hall, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And I think these are nonprivileged</p> <p>16 because all of the correspondence here identifies</p> <p>17 the documents on which you based your opinions.</p> <p>18 A. All the correspondence -- excuse me. All</p> <p>19 the correspondence I got from Mr. Hall is contained</p> <p>20 in that box.</p> <p>21 Q. Okay.</p> <p>22 A. And it identifies -- just so the record</p> <p>23 is clear, one letter said here's what you're</p> <p>24 getting, and the other letter that came had the</p> <p>25 access code to access what was on the disc.</p>
<p style="text-align: right;">Page 206</p> <p>1 Mr. Waller's testimony. But let's put Mr. Waller to</p> <p>2 the side for now. We will bring him back up later</p> <p>3 if we have to. Okay?</p> <p>4 A. That's fair.</p> <p>5 Q. And you have the basis for this decision</p> <p>6 is the article here by Hope, Blocksidge, Gabbert</p> <p>7 Sauer and others from 2015, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And you haven't, at least in your</p> <p>10 report, identified any other support for this</p> <p>11 opinion; is that right?</p> <p>12 A. I think I cited some other folks, I</p> <p>13 thought. Yeah, Heaton-Armstrong, Braidwood, so</p> <p>14 there's some other people cited as well.</p> <p>15 Q. Those are the people that are cited</p> <p>16 within the quote. Is this not a quotation?</p> <p>17 A. They are cited within the quote, but I</p> <p>18 also pulled those articles separately to make sure</p> <p>19 that it was appropriate to put in there.</p> <p>20 Q. Do you have copies of those articles?</p> <p>21 A. I do.</p> <p>22 Q. Thanks.</p> <p>23 A. There's a disc for that.</p> <p>24 Q. Let's pause. You brought some documents</p> <p>25 here with you today, correct?</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. Got it.</p> <p>2 A. Or on the jump drive.</p> <p>3 Q. Okay. And these are -- there are some</p> <p>4 handwritten notes here which is your summary of</p> <p>5 Mr. Waller's deposition?</p> <p>6 A. Yeah, the summary of that -- there's no</p> <p>7 other opinions or anything anywhere.</p> <p>8 Q. Okay.</p> <p>9 A. And all the highlighted things that you</p> <p>10 see I had highlighted.</p> <p>11 Q. Okay.</p> <p>12 A. They didn't come that way.</p> <p>13 Q. Got it.</p> <p>14 A. Just so you're clear on that.</p> <p>15 Q. Was there a general -- do you have a</p> <p>16 general process that you were following when you</p> <p>17 were highlighting things?</p> <p>18 A. Most of the highlighting came as I was</p> <p>19 writing the report.</p> <p>20 Q. Okay.</p> <p>21 A. As we all know in today's electronic</p> <p>22 world, you can't flip pages on a deposition or go 30</p> <p>23 documents deep very easily. So I identified some of</p> <p>24 the documents that I was going to be referring to on</p> <p>25 a more regular basis and just printed those out.</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
209-212

<p style="text-align: right;">Page 209</p> <p>1 Q. Okay.</p> <p>2 A. Other ones I made hand notes about, and</p> <p>3 that's about it.</p> <p>4 Q. Okay. So here's a copy of DCI 35 to 37,</p> <p>5 and you wrote "Kelly Austin Javier girlfriend" at</p> <p>6 the top.</p> <p>7 A. Right.</p> <p>8 Q. That's your handwriting?</p> <p>9 And you highlighted information here</p> <p>10 about Mr. Robinson's drug use; is that right?</p> <p>11 A. Yeah. And the reason that's highlighted</p> <p>12 is that was in that report, but it wasn't</p> <p>13 necessarily in the depositions. So I had the</p> <p>14 depositions on a separate screen that I could read,</p> <p>15 but I only had two screens so I printed that out.</p> <p>16 So that's the only reason for that.</p> <p>17 Q. Now, here I think it's a summary of</p> <p>18 Officer Kenny's interview. DCI 177 to 185, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay.</p> <p>21 A. And on the back, Counsel, is just some</p> <p>22 other notes as to where things are. And, again,</p> <p>23 page numbers, that type of thing that I just made a</p> <p>24 notation of again for writing the report.</p> <p>25 Q. Got it.</p>	<p style="text-align: right;">Page 211</p> <p>1 Officer Kenny's deposition. So as I go through it,</p> <p>2 I usually, if my memory is correct, on one of these</p> <p>3 jump drives. The DCI investigation was kind of</p> <p>4 right up front so I read that first, looked at the</p> <p>5 pictures because some of the -- my problem was when</p> <p>6 I read the report, I couldn't figure out how the</p> <p>7 stairway was. In my mind, I couldn't figure out --</p> <p>8 I thought it was somewhere else in the house at</p> <p>9 first.</p> <p>10 So I saw there were photos, I went to the</p> <p>11 photos. I started going through the photos. And as</p> <p>12 I came across this, I just wrote them down for</p> <p>13 future reference because I thought it may be</p> <p>14 important later on and as I read through everything.</p> <p>15 That's the basis for it.</p> <p>16 Q. Now, this is general dimensions for the</p> <p>17 side entrance; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. And where did this come from?</p> <p>20 A. I printed that off something. I think</p> <p>21 it's a summary of Mr. Prenz, Prenz's report. And I</p> <p>22 printed that, so I just had a reference sheet.</p> <p>23 Q. Got it. And then there's the incident</p> <p>24 detail report --</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 210</p> <p>1 A. No opinions, not anything else.</p> <p>2 Q. So why did you bring out knife 1, knife</p> <p>3 2, sword, shotgun shells, why was that significant</p> <p>4 to you?</p> <p>5 A. That was only significant in the sense</p> <p>6 that those were the photographs and those --</p> <p>7 whatever it is, DCS or whatever it is, those are</p> <p>8 referring to the photographs that were taken. As I</p> <p>9 was going through the photographs, I just wrote</p> <p>10 those down so I'd know where to go back and get them</p> <p>11 if I needed them.</p> <p>12 Q. Right. And why would those things be</p> <p>13 relevant or important?</p> <p>14 A. Because that was just part of the scene</p> <p>15 that they found upstairs.</p> <p>16 Q. Okay. But there were hundreds of</p> <p>17 pictures, right?</p> <p>18 A. There were lots of pictures. There were</p> <p>19 pictures of where Mr. Robinson allegedly punched the</p> <p>20 wall.</p> <p>21 Q. Well, my question is: Why were the</p> <p>22 pictures of the knife, the sword, the shotgun shells</p> <p>23 that Officer Kenny didn't know were in that</p> <p>24 residence, why were those important to you?</p> <p>25 A. Because at the time, I hadn't read</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. -- which you highlighted the time, and</p> <p>2 you got the 48 seconds which we already discussed?</p> <p>3 A. Right.</p> <p>4 Q. And then you've got Danny Waller's</p> <p>5 report, correct?</p> <p>6 A. Correct.</p> <p>7 Q. So here on -- well, there's no Bate stamp</p> <p>8 for -- guess there wouldn't be for Waller's report.</p> <p>9 Page 7, it's Opinion No. 4, and you've highlighted</p> <p>10 part of it.</p> <p>11 And do you see that, Doctor?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And you wrote on the side of that</p> <p>14 paragraph, "heard only one voice"?</p> <p>15 A. Correct.</p> <p>16 Q. Now, did you mention the fact that</p> <p>17 Officer Kenny testified that he heard only one voice</p> <p>18 in your report?</p> <p>19 A. I mentioned he heard -- let me look. He</p> <p>20 said he heard sound of incoherent yelling and</p> <p>21 screaming. And then I referenced after hearing,</p> <p>22 quote, "What are you going to do now bitch," end</p> <p>23 quote, coming from a person inside the building. So</p> <p>24 that would have been one person.</p> <p>25 Q. Yeah. Okay. Now, does -- you just read</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
213-216

<p style="text-align: right;">Page 213</p> <p>1 a portion of your report where you mentioned</p> <p>2 incoherent screaming, does that -- you want to</p> <p>3 include that in the "here" column, the "not here"</p> <p>4 column instead of the "not here" column from Exhibit</p> <p>5 20 -- 217?</p> <p>6 A. As I recall, Counsel, this exhibit was</p> <p>7 about what he knew going to the call, not what he</p> <p>8 learned after the call or during the call. If we</p> <p>9 are going to go with what he learned during the</p> <p>10 call, we can add a lot of things in there. But my</p> <p>11 understanding was, and I could be wrong, but I</p> <p>12 thought we were creating this based on what he knew</p> <p>13 responding to the call.</p> <p>14 Q. Okay.</p> <p>15 A. This is different.</p> <p>16 Q. Okay. So what he knew responding to the</p> <p>17 call and what he learned once he got there is</p> <p>18 different?</p> <p>19 A. Well, it's different in the calculus of</p> <p>20 why he entered the building.</p> <p>21 Q. Okay. So incoherent screaming was</p> <p>22 present, right?</p> <p>23 A. He said he heard incoherent screaming.</p> <p>24 Q. Okay.</p> <p>25 A. And he also heard a question being asked.</p>	<p style="text-align: right;">Page 215</p> <p>1 excited delirium or not excited delirium. We all</p> <p>2 have cell phones. We all ask people could you</p> <p>3 repeat that again because it was incoherent. That</p> <p>4 certainly doesn't say they're in excited delirium.</p> <p>5 Q. Are you reluctant to find that there were</p> <p>6 factors that, you know, corroborated his -- Officer</p> <p>7 Kenny's concern that this might have been an excited</p> <p>8 delirium event?</p> <p>9 A. No, what I'm trying to be is objective in</p> <p>10 this.</p> <p>11 Q. Okay.</p> <p>12 A. Because what he knew -- I mean, stripping</p> <p>13 clothing, it can be a sign, it doesn't have to be a</p> <p>14 sign. A person could be hot for a number of other</p> <p>15 reasons. The monkey walking, that could be</p> <p>16 drunkenness. It's odd behavior. I think we can all</p> <p>17 pretty much agree with that unless he's showing off,</p> <p>18 that might even become under bizarre behavior.</p> <p>19 Making people feel uncomfortable. His friend felt</p> <p>20 uncomfortable. It was reported that he felt</p> <p>21 uncomfortable. But Officer Kenny hadn't observed</p> <p>22 any of those things yet.</p> <p>23 Q. So Officer Kenny reported incoherent</p> <p>24 yelling, but you don't want to classify that as a</p> <p>25 factor present as related to excited delirium</p>
<p style="text-align: right;">Page 214</p> <p>1 Q. Okay. So assuming that he heard</p> <p>2 incoherent screaming, would that be a factor that is</p> <p>3 associated with excited delirium events that is</p> <p>4 actually present here or not present here?</p> <p>5 A. I don't think we can say anything about</p> <p>6 incoherent screaming because it may have been that</p> <p>7 he just couldn't hear it. He said it was</p> <p>8 incoherent, but then he heard the question that was</p> <p>9 coherent. So I don't think we can force fit that</p> <p>10 into any one particular category.</p> <p>11 Q. So you're not crediting Officer Kenny</p> <p>12 saying he heard incoherent screaming?</p> <p>13 A. Okay. I think we're -- maybe it's late</p> <p>14 in the day and I'm getting confused.</p> <p>15 Q. Okay.</p> <p>16 A. What I'm saying is what he heard when he</p> <p>17 got there to the house, he heard incoherent</p> <p>18 screaming and that could have been because he was</p> <p>19 outside. And then he heard the question that I read</p> <p>20 that apparently wasn't incoherent because he could</p> <p>21 hear it and maybe he was closer. That's different</p> <p>22 than what he knew going on that call.</p> <p>23 Q. Okay.</p> <p>24 A. So if something is incoherent, I don't</p> <p>25 think we can say just because it's incoherent it's</p>	<p style="text-align: right;">Page 216</p> <p>1 because you think there could be other reasons why</p> <p>2 it was incoherent?</p> <p>3 A. There could be other reasons why such as</p> <p>4 he's outside. The video shows when he got there he</p> <p>5 kind of walked outside the -- outside the driveway</p> <p>6 area. Well, if the guy is inside and yelling or</p> <p>7 maybe turned a different direction just because you</p> <p>8 can't hear somebody, I certainly wouldn't jump to</p> <p>9 the conclusion that that's mental illness, excited</p> <p>10 delirium or a speech impediment.</p> <p>11 Q. What I'm asking is: Are you reluctant to</p> <p>12 count that factor as present here because you would</p> <p>13 prefer for it to not be present?</p> <p>14 A. No. Based on your previous question, it</p> <p>15 wasn't there.</p> <p>16 Q. Okay.</p> <p>17 A. We're at a different time frame now.</p> <p>18 Q. Okay. So the different time frame, now,</p> <p>19 Officer Kenny was informed through dispatch that</p> <p>20 Tony Robinson had been running wildly through the</p> <p>21 streets, correct?</p> <p>22 A. He was running the streets, yes.</p> <p>23 Q. And Officer Kenny reported himself that</p> <p>24 there was incoherent speech, correct?</p> <p>25 A. At a different point in time in the</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
217-220

<p style="text-align: right;">Page 217</p> <p>1 question when we developed this.</p> <p>2 Q. Okay. So maybe we have different</p> <p>3 memories about the time in which we developed this.</p> <p>4 So let's start.</p> <p>5 So in your report as referenced in your</p> <p>6 2006 article, there are a number of factors that you</p> <p>7 say -- or excuse me. Excuse me.</p> <p>8 There are a number of factors that you</p> <p>9 identify -- excuse me -- that are physical</p> <p>10 characteristics and other behavioral cues that</p> <p>11 include, but are not limited to, a list that we went</p> <p>12 through earlier?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And in going through that list, my</p> <p>15 question for you is which ones are present in this</p> <p>16 overall situation? So a combination of the things</p> <p>17 that Officer Kenny was told via dispatch or through</p> <p>18 his computer and those that based upon his account</p> <p>19 he observed at the time.</p> <p>20 A. Okay.</p> <p>21 Q. Is that clear?</p> <p>22 A. Okay.</p> <p>23 Q. Okay. And so in the -- I think the -- we</p> <p>24 have extreme agitation. Not here, right?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 219</p> <p>1 your children, but I wouldn't say that is screaming,</p> <p>2 they might.</p> <p>3 Q. Okay. So in terms of the behavioral cues</p> <p>4 with respect to identifying things that are</p> <p>5 generally present in a person who is in an excited</p> <p>6 delirium state, screaming, yes or no?</p> <p>7 A. I would say no. But yelling, yes.</p> <p>8 Q. Incoherent speech?</p> <p>9 A. Somewhere after he exited the patrol car,</p> <p>10 he did report that.</p> <p>11 Q. Naked or stripping off of clothing?</p> <p>12 A. Stripping off of some clothing was</p> <p>13 reported.</p> <p>14 Q. Disorientation?</p> <p>15 A. Not present.</p> <p>16 Q. Superhuman strength?</p> <p>17 A. Not present.</p> <p>18 Q. Diminished sense of pain?</p> <p>19 A. (No response.)</p> <p>20 Q. Violent resistance during control and</p> <p>21 restraint?</p> <p>22 A. At the top of the stairs, I would say</p> <p>23 that was violent.</p> <p>24 Q. Delusions of grandeur?</p> <p>25 A. But when you put that down, put capture</p>
<p style="text-align: right;">Page 218</p> <p>1 Q. Violent or bizarre behavior?</p> <p>2 A. I think we have that. We have the</p> <p>3 bizarre behavior. And later if we hear -- or based</p> <p>4 on what Officer Kenny said, it could have even been</p> <p>5 violent behavior.</p> <p>6 Q. Running wildly?</p> <p>7 A. Running I would agree with, I'm not sure</p> <p>8 about the wildly. But running, there was a report</p> <p>9 of him running.</p> <p>10 Q. He was running in the street, right?</p> <p>11 A. A lot of people run in the street. That</p> <p>12 says running wildly, that's the behavioral</p> <p>13 difference.</p> <p>14 Q. Okay.</p> <p>15 A. I can jog down the street, I can run down</p> <p>16 the street, but I'm not in a state of excited</p> <p>17 delirium. So I would agree that running would be</p> <p>18 there but wildly, I don't know. I don't think we</p> <p>19 have words to that effect.</p> <p>20 Q. Okay. Screaming?</p> <p>21 A. There was -- I think the word yelling was</p> <p>22 used.</p> <p>23 Q. So screaming and yelling is synonymous?</p> <p>24 A. I don't count it as synonymous. I count</p> <p>25 yelling as yelling. I can yell -- you can yell at</p>	<p style="text-align: right;">Page 220</p> <p>1 behind it.</p> <p>2 Q. Capture, is that in your article?</p> <p>3 A. Yeah, capture, control, restraints and</p> <p>4 transport. This is only control and restraint.</p> <p>5 That's different than capture. When he was at the</p> <p>6 top of the steps, he was trying to capture</p> <p>7 Mr. Robinson, that's different than control and</p> <p>8 restraint.</p> <p>9 Q. Does violent resistance cover it?</p> <p>10 A. If you put capture behind it.</p> <p>11 Q. So Officer Kenny was trying to capture</p> <p>12 him not control or restrain him, is that what you're</p> <p>13 trying to --</p> <p>14 A. You can't control and restrain somebody</p> <p>15 until you capture them.</p> <p>16 Q. Okay.</p> <p>17 A. That's the way the model works.</p> <p>18 Q. Okay.</p> <p>19 A. I just want to make it clear so it's</p> <p>20 consistent.</p> <p>21 Q. Sure. Delusions of grandeur?</p> <p>22 A. No, not aware of that.</p> <p>23 Q. Easily distracted?</p> <p>24 A. (Witness shakes head.)</p> <p>25 Q. Lack of focus, no, right?</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
221-224

<p style="text-align: right;">Page 221</p> <p>1 A. Right.</p> <p>2 Q. Scattered ideas.</p> <p>3 A. (No response.)</p> <p>4 Q. Acute onset?</p> <p>5 A. Nobody knows or the officer didn't know.</p> <p>6 Q. And makes people feel uncomfortable?</p> <p>7 A. I think that's fair. Made Mr. Limon and</p> <p>8 his girlfriend feel uncomfortable. So.</p> <p>9 Q. Okay. So now we can mark this as</p> <p>10 Exhibit 219, is that right?</p> <p>11 A. No, this is 214. I don't know.</p> <p>12 Q. Is Exhibit 219 accurate reflection of the</p> <p>13 discussion we just had?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Thank you.</p> <p>16 (Whereupon, Exhibit 219 was</p> <p>17 marked for identification.)</p> <p>18 (A recess was taken.)</p> <p>19 (Whereupon, Exhibit 220 was</p> <p>20 marked for identification.)</p> <p>21 BY MR. OWENS:</p> <p>22 Q. Doctor, during the break we made copies</p> <p>23 of some handwritten notes that you took. Am I right</p> <p>24 that these are three pages of notes from Danny</p> <p>25 Waller's deposition?</p>	<p style="text-align: right;">Page 223</p> <p>1 Q. Okay.</p> <p>2 A. Sorry about the handwriting.</p> <p>3 Q. No, mine is worse. I can't read mine at</p> <p>4 all.</p> <p>5 So I just wanted to make these part of</p> <p>6 the record that's -- this is just the stuff that you</p> <p>7 considered important as you were going along for</p> <p>8 your purposes in examining Mr. Waller's deposition;</p> <p>9 is that right?</p> <p>10 A. Yes. As I read it, I made those notes.</p> <p>11 I may have gone back and pulled out other things</p> <p>12 that I didn't write down as I wrote my report.</p> <p>13 Q. Okay.</p> <p>14 A. But generally I try to summarize.</p> <p>15 Q. Now, in report eight -- excuse me,</p> <p>16 Opinion No. 8 in your report, you discuss -- and</p> <p>17 again, let's keep Mr. Waller's testimony out of this</p> <p>18 and let's just talk about your opinion.</p> <p>19 And what I'd like to understand is,</p> <p>20 you've got the study here and then that itself cited</p> <p>21 some other studies that you provided to us on disc</p> <p>22 today, right?</p> <p>23 A. Right.</p> <p>24 Q. And then now, your opinion is that</p> <p>25 stressful events such as the use of deadly force do</p>
<p style="text-align: right;">Page 222</p> <p>1 A. Correct.</p> <p>2 Q. And here you've got them identified as</p> <p>3 the "Summary"?</p> <p>4 A. Correct.</p> <p>5 Q. Now, is this intended to be a summary of</p> <p>6 the entire things, the parts that you thought were</p> <p>7 important? How did you determine what went in this?</p> <p>8 A. It's not a summary of the entire</p> <p>9 deposition.</p> <p>10 Q. Sure.</p> <p>11 A. Because parts of it were not relevant.</p> <p>12 Q. Yeah.</p> <p>13 A. And then just key things I read that</p> <p>14 surfaced that I wrote down.</p> <p>15 Q. Okay. Now, the -- if you could just help</p> <p>16 me out, do you see where it's 35 and then colon 7 on</p> <p>17 the first page?</p> <p>18 A. Yes.</p> <p>19 Q. Is that -- says "was a large knife or</p> <p>20 sword upstairs"?</p> <p>21 A. Correct.</p> <p>22 Q. And then what does it say directly below</p> <p>23 that?</p> <p>24 A. "Admits person," parentheses, "victim be</p> <p>25 attacked and says nothing."</p>	<p style="text-align: right;">Page 224</p> <p>1 have an impact on witness recall, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And your final paragraph of your report</p> <p>4 is that stressful events had been shown to have an</p> <p>5 impact on memory. There's no evidence that Officer</p> <p>6 Kenny's inaccurate recall of some of the details of</p> <p>7 his deadly force encounter with Mr. Robinson has</p> <p>8 been intentional, even though he later qualified</p> <p>9 some of the statements he made following the close</p> <p>10 combat encounter, correct?</p> <p>11 A. Correct.</p> <p>12 Q. The first thing is what are -- can you</p> <p>13 specifically identify for me what opinions or</p> <p>14 statements that he made that you found that he later</p> <p>15 qualified?</p> <p>16 A. I would have to go back and look, and I</p> <p>17 didn't put those in there and that's my fault. I</p> <p>18 think there was some discussion he did a walkthrough</p> <p>19 of the crime scene. There was a period of time</p> <p>20 between the interviews. I remember that coming up.</p> <p>21 And I think, as I recall, he just provided more</p> <p>22 detail about certain aspects of what took place than</p> <p>23 what he initially had reported.</p> <p>24 I would have to go back and look</p> <p>25 specifically.</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
225-228

<p style="text-align: right;">Page 225</p> <p>1 Q. Okay. So there's nothing that comes to 2 mind specifically you didn't think about? 3 A. No. 4 Q. Okay. Now, is this opinion, are you 5 saying in this opinion that if there is some details 6 that Officer Kenny got that are inaccurate or 7 contradict objective evidence that we should say 8 that his memory should be -- is expected to be 9 infallible -- excuse me. Let me back up and ask it 10 again. Strike all of that. 11 Is it your opinion here that because this 12 was a stressful event that any inaccuracies in 13 Officer Kenny's account of the shooting event can be 14 accounted for by the stress of the incident? 15 A. No. What I'm saying is there's 16 scientific study that would show that stressful 17 events can impact memory recall. 18 Q. Sure. 19 A. That's all I'm saying. And there seems 20 to have been some concern about that with 21 Mr. Waller, and I was just coming back to refute 22 that in the sense that there have been scientific 23 studies. There have been several studies, as a 24 matter of fact. I tried to only go with peer 25 reviewed publications that would reference that</p>	<p style="text-align: right;">Page 227</p> <p>1 potential evidence or what was there found or 2 collected at the scene. If you had -- for example, 3 if the Officer said well, my first shot was outside 4 on the sidewalk, and you had shell casings at the 5 sidewalk, that might indicate that he's right. If 6 he said I fired my first shot in the basement and 7 nobody has been in the basement, there's no shell 8 casings, that might serve to bring that statement 9 into question. 10 Q. So you would look to other objective 11 evidence to sort of determine whether it 12 corroborates or undermines or contradicts the 13 officer's account? 14 A. Yeah, you would certainly use that. Not 15 that any -- and it would depend on the evidence 16 itself. If I said that I started shooting right 17 where I'm sitting now but the shell casings were in 18 the corner, well, that doesn't mean that I'm 19 inaccurate, it may mean somebody came in here and 20 kicked the shell casings as part of the scuffle or 21 part of the event. So there's a lot of variables 22 you have to take into account. 23 Q. Okay. Could you also be lying if you 24 said that? 25 A. Oh, sure. I mean, it's always a</p>
<p style="text-align: right;">Page 226</p> <p>1 because there are some -- there has been some other 2 studies that have been done, but I'm not sure 3 they've been peer reviewed or published. 4 Q. Okay. 5 A. As peer-reviewed publications. 6 Q. Got it. And so stressful events can 7 impact memory which can affect a witness's or 8 participant's ability to accurately report details 9 about what happened during that event; is that 10 right? 11 A. Sometimes, yes. 12 Q. Okay. And there is no way identified 13 here from discerning the accurate facts from the 14 inaccurate ones, correct? 15 A. Well, I think we talked about that a 16 little earlier about what the video showed versus 17 what the officer recalled, and I think that's part 18 of that. That would go to this. 19 Q. Sure. But let's say that there's no 20 video and you've got a stressful event here, and do 21 you have any mechanism for determining which facts 22 the officer got correct and which ones he got 23 incorrect about the incident? 24 A. No, I don't think there's a way to really 25 do that in a vacuum. I think you have to use the</p>	<p style="text-align: right;">Page 228</p> <p>1 possibility. 2 Q. Right. And the study that you cite 3 doesn't consider lying or deliberate fabrication, 4 right? It's beyond the scope of their study, right? 5 A. No, there were several studies listed 6 here and one of the studies -- and I'm trying to 7 think which one it was. I think it was -- might 8 have been Hope, Gabbert, Fraser. One of the 9 studies -- and it's on that disc I gave you. 10 Q. Sure. 11 A. Talked about letting officers talk, it 12 was something about the crossroads. And if I talked 13 to you -- they had a scenario -- and then your side 14 of the table talked to my side of the table and then 15 we all wrote reports, and they found -- 16 Q. You're referring to crossroads in Counsel 17 Magazine? 18 A. That's correct. 19 Q. Okay. 20 A. And basically they found that there 21 wasn't really much deviation from what I perceived 22 as I reported even though I may have heard things 23 from you. 24 Q. Right. But you agree that the quote you 25 put here and the standard that you're quoting from</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
229-232

<p style="text-align: right;">Page 229</p> <p>1 most directly says that deliberate fabrications 2 outside the scope of that study, right? 3 A. Correct. 4 Q. And that study is, at least what I 5 thought from what you were saying, a significant 6 study because it was the first to document the 7 physiological difference between witnesses who have 8 different roles in responding to the same incident, 9 right? 10 A. I don't know if it was the first, it was 11 one of the first. 12 Q. That's what's in your report? 13 A. Right. 14 Q. Do you have any reason to doubt what is 15 in your report? 16 A. No. First of all, I didn't say that 17 Counsel. And I'm going to take issue with that, and 18 I'm not being nasty. It says at the bottom the 19 researchers noted this is the first study. I didn't 20 note it, I'm reporting it. I just want that for 21 clarification. 22 Q. Okay. Sure. 23 A. They claim it was the first study. I 24 have no way to validate that one way or the other. 25 But they said it was the first study. I'm going to</p>	<p style="text-align: right;">Page 231</p> <p>1 findings. 2 Q. Well, you're relying on it because you 3 believe that this was a scientific valid study? 4 A. The sample size was over 50, which is a 5 good thing. I think the sample size was 75 or 6, 6 when I read the study, as much as you can read about 7 the methodology, it appeared to be fairly sound. It 8 was done and published by several university 9 researchers. So peer reviewed, while it doesn't 10 guarantee a hundred percent, certainly goes a long 11 way toward accuracy. 12 Q. But you cited it because you believe it 13 to be reliable? 14 A. Correct. 15 Q. Is there a reason that you included the 16 number 76 even though not all 76 officers 17 participated in the study? 18 A. Yeah. It was reported at 76. I put the 19 end down at 76, mostly for purposes to show the 20 size, the overall initial size of the study. 21 Q. But wasn't the size really 64? 22 A. It was sixty -- ultimately, they weaned 23 it out to 64, which is still over 50. And that 24 becomes important under the -- what's a statistical 25 concept called the theory of generalizability, where</p>
<p style="text-align: right;">Page 230</p> <p>1 have to go along with that. I think it was the 2 first published study. 3 I think for science did studies early on, 4 but those studies may not have been published until 5 this collaboration. There's also studies, 6 independent of this one, on eyewitness accounts that 7 we're all familiar with of eyewitness inaccuracies 8 to accidents and what have you. I think this is the 9 first one, as you cited correctly, a first 10 responder-type situations like this. 11 Q. Got it. 12 So, I mean, you don't have any reason to 13 doubt that this article published in Law and Human 14 Nature is correct when they say that this is the 15 first study to document a physiological difference 16 between witnesses who have different roles in 17 responding to the same incident? 18 A. No, I don't have anything to prove or 19 disprove that. 20 Q. Well, you're relying on it -- 21 A. I'm relying on it. 22 Q. -- in rendering opinions in this case, 23 correct? 24 A. Yeah, I'm not relying on the fact that it 25 was a first, I'm relying on the fact that there were</p>	<p style="text-align: right;">Page 232</p> <p>1 you have to have a minimal sample size. So this 2 certainly exceeded that minimal sample size. 3 Q. Then the number of people that were 4 actually part of the study and participated in it 5 they got information from was not 76, right? 6 A. Right. They started out with 76. They 7 weaned some of them out, so when you -- whenever you 8 do a study you always start with here's what we 9 started with, here's what we ended with. I gave a 10 gross amount in the beginning. 11 Q. You say weaned them out. I thought that 12 some of them just couldn't do it for, you know, 13 scheduling reasons, they had other life conflicts? 14 A. That's weaning them out. 15 Q. Okay. 16 A. Those are all variables as to why people 17 can't participate. When I did research, I had some 18 people on vacation, so they weren't included because 19 they weren't around. 20 Q. Sure. 21 A. That just happens. 22 Q. Now, the -- I think this is clear, but I 23 just want to make sure that you have no way of 24 determining whether or not if stress influenced 25 Officer Kenny's recall which facts he could have got</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISON

October 20, 2016  
233-236

<p style="text-align: right;">Page 233</p> <p>1 right and which facts he could have got wrong, 2 correct? 3 A. Don't know. 4 Q. And in the study officers were mistaken 5 about significant facts about the force incident, 6 right? 7 A. Correct. 8 Q. That they thought the suspect had a 9 weapon when he didn't, right? 10 A. Right. 11 Q. So you don't have a way of distinguishing 12 whether or not Matt Kenny could have been right or 13 wrong about minor details or even very significant 14 ones, right? 15 A. I don't know. 16 MR. OWENS: Can you read that question 17 back? 18 (Record read.) 19 BY MR. OWENS: 20 Q. So on Opinion No. 8, you're not 21 expressing an opinion here one way or the other 22 about whether or not doing a walkthrough could 23 improve recall or not, correct? 24 A. No. I didn't put that in here, although 25 there is scientific proof to show that that usually</p>	<p style="text-align: right;">Page 235</p> <p>1 intentional," right? 2 A. (Witness nods head.) 3 Q. Is there any evidence to show that it was 4 unintentional? 5 A. No. 6 Q. And officers, and I know you do a lot of 7 training, know that if they use deadly force in an 8 unjustified manner they could be subject to criminal 9 penalties, correct? 10 A. Sure. 11 Q. And they know that they could be possibly 12 sued in a lawsuit, correct? 13 A. Correct. 14 Q. And I just want to be clear that there's 15 no information that you're aware of, either way, 16 whether Officer Kenny's inaccurate recall of details 17 in the case was intentional or unintentional, right? 18 A. I would have no way of knowing. 19 Q. Okay. But it is your opinion that 20 Officer Kenny did inaccurately report some of the 21 information in this case? 22 A. I think initially, and then it was 23 clarified after, I think, the walkthrough and some 24 time. 25 Q. So what details did Officer Kenny, in</p>
<p style="text-align: right;">Page 234</p> <p>1 improves recall. 2 Q. Okay. And you're not opining one way or 3 the other whether or not the force science 4 literature on a cool off period improves recall one 5 way or the other, right? 6 A. Well, I don't have it in here, but I'm 7 aware of the studies that say, you know, usually 8 wait a period of time to do your interviews and that 9 type of thing. 10 Q. Right. You're not offering those 11 opinions related to those topics in this case? 12 A. No, this was strictly aimed at what your 13 expert wrote in his report. 14 Q. And aside from being familiar with some 15 of these studies, do you have any particular 16 expertise in evaluating the effect of stress on 17 memory and recall? 18 A. No, I don't do those types of studies. 19 MR. OWENS: We'll just take two minutes. 20 (A recess was taken.) 21 BY MR. OWENS: 22 Q. So the last paragraph in your report you 23 mentioned, "There's no evidence that Officer Kenny's 24 inaccurate recall of some of the details of his 25 deadly force encounter with Mr. Robinson has been</p>	<p style="text-align: right;">Page 236</p> <p>1 your opinion, misremember? 2 MR. HALL: Objection to form. Asked and 3 answered. 4 Go ahead. 5 THE WITNESS: We kind of went over this 6 before. I think probably the biggest one was what 7 the video showed versus what he reported. I think 8 that was right at the end, at that end frame. And I 9 think that was probably the one that stands out in 10 my mind. 11 BY MR. OWENS: 12 Q. Okay. Now, you're unaware of -- excuse 13 me. 14 Are you able to determine whether any of 15 the other details Officer Kenny provided are 16 accurate or inaccurate due to the stress of the 17 event? 18 MR. HALL: Objection to form. Asked and 19 answered. 20 THE WITNESS: I'm not quite sure I follow 21 your question. As I recall, it was some objective 22 evidence that he was punched. But regarding 23 anything else that took place, I wouldn't know 24 whether stress impacted that or not. 25 ///</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
237-240

<p style="text-align: right;">Page 237</p> <p>1 BY MR. OWENS:</p> <p>2 Q. So there was subjective evidence that he</p> <p>3 had a cut on his head, is that what you're referring</p> <p>4 to?</p> <p>5 A. Yes.</p> <p>6 Q. Now, is there any other evidence other</p> <p>7 than that that would preclude him from being wrong</p> <p>8 about whether he was punched and whether or not he</p> <p>9 fell on the stairs?</p> <p>10 MR. HALL: Objection. Foundation.</p> <p>11 Go ahead.</p> <p>12 THE WITNESS: I wouldn't know.</p> <p>13 BY MR. OWENS:</p> <p>14 Q. Okay. Is there any way to know whether</p> <p>15 Officer Kenny was right about being punched or</p> <p>16 whether he fell or whether something else happened?</p> <p>17 A. Well, I think there is a way to describe</p> <p>18 whether or not he fell because if he had fallen, he</p> <p>19 would have been upside down, if you will, on the</p> <p>20 steps or tumbled backward. And I don't think he</p> <p>21 would have had him exiting that doorway in the</p> <p>22 manner that the video showed.</p> <p>23 Q. Could he have fallen forward?</p> <p>24 MR. HALL: Objection to form.</p> <p>25 Foundation.</p>	<p style="text-align: right;">Page 239</p> <p>1 Q. Now, you said that two-thirds of your</p> <p>2 current income comes from -- I'm going to get the</p> <p>3 acronym wrong. Can you help me?</p> <p>4 A. IPICD.</p> <p>5 Q. IPICD?</p> <p>6 A. Correct.</p> <p>7 Q. And can you explain to me the</p> <p>8 relationship between your work at IPICD and your</p> <p>9 consulting work, are they related?</p> <p>10 A. They're related, I guess, in a sense.</p> <p>11 IPICD is a corporation. The consulting business is</p> <p>12 a dba, so they're two separate entities. The</p> <p>13 training business and the program development and</p> <p>14 instructional design that goes with that and in some</p> <p>15 cases research that we do in the institute allows me</p> <p>16 to gain insights in the specific issues that</p> <p>17 ultimately may help me on the consulting side.</p> <p>18 That's probably the best way to describe that.</p> <p>19 Q. Okay. How do you determine whether or</p> <p>20 not to be -- come involved in a case, so to be</p> <p>21 retained?</p> <p>22 A. Generally the process I use is regardless</p> <p>23 of who the counsel is, you get a phone call and</p> <p>24 somebody says I got this case. Generally, they'll</p> <p>25 name the caption of the case and say do you have a</p>
<p style="text-align: right;">Page 238</p> <p>1 THE WITNESS: If he fell forward, it</p> <p>2 would have been a trip and he would have fallen,</p> <p>3 allegedly, into Mr. Robinson, which there is no</p> <p>4 discussion about that taking place.</p> <p>5 BY MR. OWENS:</p> <p>6 Q. Okay. Now, you're aware that Officer</p> <p>7 Kenny says that he hit his head into the wall,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Now, there was no drywall or anything</p> <p>11 like that on Officer Kenny when his pictures were</p> <p>12 taken, you didn't see anything like that, right?</p> <p>13 A. I didn't see anything in those, no.</p> <p>14 Q. Now, you don't have any way of knowing</p> <p>15 whether Officer Kenny is accurate in his report of</p> <p>16 how he got that cut on his head one way or the</p> <p>17 other, correct?</p> <p>18 A. No, just how he described it. I wasn't</p> <p>19 there.</p> <p>20 Q. Right. But in the context of your</p> <p>21 opinions that stressful events can affect an</p> <p>22 officer's ability to recall correctly, we don't know</p> <p>23 whether or not he got that detail right or wrong,</p> <p>24 correct?</p> <p>25 A. That's a fair statement.</p>	<p style="text-align: right;">Page 240</p> <p>1 conflict. If I do, I say I do. If I don't, I say I</p> <p>2 don't. And they'll give me what I call their</p> <p>3 version of the facts. And my usual practice is send</p> <p>4 me a couple police reports or send me something and</p> <p>5 I'll take a look at it and determine whether or not</p> <p>6 I can be of assistance in the case.</p> <p>7 That's usually how I work. I may call</p> <p>8 them back and say I can help you with this piece but</p> <p>9 I can't help you with that piece, or I can't help</p> <p>10 you at all or I can help you with everything, it</p> <p>11 just depends.</p> <p>12 Q. Does it depend at all on whether or not</p> <p>13 you're supporting an officer or opposing one?</p> <p>14 A. No.</p> <p>15 Q. Earlier we discussed the agitated chaotic</p> <p>16 events trademark.</p> <p>17 A. Correct.</p> <p>18 Q. You said that was a common law trademark?</p> <p>19 A. Correct.</p> <p>20 Q. Was that for your consulting business or</p> <p>21 is that the trademark for IPICD?</p> <p>22 A. For the IPICD.</p> <p>23 Q. Okay. What's the purpose of having a</p> <p>24 trademark?</p> <p>25 A. The purpose of having a trademark is</p>



JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
241-244

<p style="text-align: right;">Page 241</p> <p>1 basically to identify your intellectual property.</p> <p>2 And we're in a process right now of securing some</p> <p>3 federal marks so that they become ours so we can</p> <p>4 brand that and move it forward. I mean, that's just</p> <p>5 part of the marketing branding process.</p> <p>6 Q. Got it.</p> <p>7 And is part of that so that people would</p> <p>8 have to pay you to be able to use your trademark?</p> <p>9 A. No. When we have somebody go through our</p> <p>10 program we license them at no cost.</p> <p>11 Q. They have to pay for the program?</p> <p>12 A. They have to pay for the program, sure.</p> <p>13 Q. Okay. And having a trademark increases</p> <p>14 the value of the program, right?</p> <p>15 A. I'm not sure governmental entities really</p> <p>16 understand that, that part of the process. They're</p> <p>17 more interested in what's the information, can I get</p> <p>18 it and we got to teach our people.</p> <p>19 Q. Got it.</p> <p>20 Now, the IPICD, the cases that you have</p> <p>21 in your testimony history, is there a way to</p> <p>22 determine which ones you did affiliated with them</p> <p>23 and which ones you did affiliated with other</p> <p>24 entities or is all of your testimony history related</p> <p>25 to your consulting and expert --</p>	<p style="text-align: right;">Page 243</p> <p>1 which decisions go on that site?</p> <p>2 A. Most of the decisions on that site -- we</p> <p>3 have a lawyer on our -- we have two lawyers on our</p> <p>4 board of directors and many times they will send</p> <p>5 me -- or not me, they'll send our Web guy analysis</p> <p>6 or they may send a summary or they may send the case</p> <p>7 and say this needs -- this is something that's</p> <p>8 relevant for people who come to the website.</p> <p>9 Because if you go under our articles and</p> <p>10 publications and that link on our website, you'll</p> <p>11 get a whole bunch of different things.</p> <p>12 Sometimes Wayne Schmitt from the</p> <p>13 Americans for Effective Law Enforcement will send us</p> <p>14 stuff as well and we'll put that up. And sometimes</p> <p>15 people will write short summaries about a case and</p> <p>16 we'll put those up, maybe with a hyperlink to the</p> <p>17 case or to some other organization.</p> <p>18 MR. OWENS: Can we mark this as</p> <p>19 Exhibit 220, please.</p> <p>20 MR. HALL: 221.</p> <p>21 MR. OWENS: 221. Thanks.</p> <p>22 (Whereupon, Exhibit 221 was</p> <p>23 marked for identification.)</p> <p>24 BY MR. OWENS:</p> <p>25 Q. So Exhibit 221, I'll represent to you is</p>
<p style="text-align: right;">Page 242</p> <p>1 A. It's all related to the consulting</p> <p>2 business.</p> <p>3 Q. Okay. So in your capacity as a IPID</p> <p>4 [sic] founder and president, you don't consider that</p> <p>5 part of your testimony experience?</p> <p>6 A. Not sure I understand that question.</p> <p>7 Q. Sure. So IPICD has been involved in a</p> <p>8 number of cases, right?</p> <p>9 A. No.</p> <p>10 Q. There are judicial decisions listed on</p> <p>11 your website, right?</p> <p>12 A. Well, there's judicial decisions listed</p> <p>13 on the website because we put them there.</p> <p>14 Q. Right.</p> <p>15 A. It doesn't mean that I was involved in</p> <p>16 them.</p> <p>17 Q. So the judicial decisions listed on the</p> <p>18 website aren't cases that you were involved in?</p> <p>19 A. Not necessarily, no.</p> <p>20 Q. Okay.</p> <p>21 A. If you have some examples --</p> <p>22 Q. No. I'm just wondering how it works for</p> <p>23 you. So there's judicial decisions on the website</p> <p>24 of the company that you are the president and</p> <p>25 founder of, and I'm wondering how you determine</p>	<p style="text-align: right;">Page 244</p> <p>1 the judicial decisions portion of the website from</p> <p>2 ICIPD, does that look familiar to you?</p> <p>3 A. Yes.</p> <p>4 Q. So I just want to be clear, the decisions</p> <p>5 listed here are not necessarily cases that the ICIPD</p> <p>6 has been involved in?</p> <p>7 A. If you look right there it says, "These</p> <p>8 cases were compiled by the Americans for Effective</p> <p>9 Law Enforcement."</p> <p>10 Q. Is that a yes or a no?</p> <p>11 A. These came from AELE legal center. I</p> <p>12 didn't participate in putting these together, these</p> <p>13 all came from AELE.</p> <p>14 Q. And what's AELE law enforcement legal</p> <p>15 center?</p> <p>16 A. It's the Americas for Effective Law</p> <p>17 Enforcement. It's a legal center. They're in Park</p> <p>18 Ridge, Illinois right outside of Chicago, just west</p> <p>19 of the city. It's a group that provides legal</p> <p>20 training for lawyers, police and others. They write</p> <p>21 amicus briefs on certain issues. Everyone involved</p> <p>22 at AELE, except administrative staff, are lawyers.</p> <p>23 They put on seminars here in Las Vegas on a regular</p> <p>24 basis. I'm on the faculty of AELE for a couple</p> <p>25 programs, not all of them.</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
245-248

<p style="text-align: right;">Page 245</p> <p>1 And this was put together either by Wayne 2 Schmitt himself who was the executive director at 3 the time, now it's Judge Plitt, or this was put 4 together by one of their legal researchers. But I 5 didn't put any of this together. 6 Q. Okay. So they put it together, and then 7 did you ask them to put it together so you could put 8 it on your website or how does that work? 9 A. Wayne Schmitt, early on when we started 10 the institute, came to me and said, "You need to 11 have some court decisions on there. Could we send 12 you a few?" And when you click on the link it 13 should go to their website. So it was a way of 14 getting the word out about AELE as well. So we were 15 grateful to have it. And we said sure, we will put 16 it up there. 17 Q. This may be an obvious question. When 18 you click the links to some of the cases and 19 portions of the cases are highlighted, you don't 20 know anything about that? 21 A. I don't have anything to do with that. 22 MR. OWENS: Okay. I think that's all the 23 questions. 24 MR. HALL: I've got just a couple of 25 follow-up questions.</p>	<p style="text-align: right;">Page 247</p> <p>1 instructor signs a formal agreement with the company 2 that says, I believe it's 48 hours prior to teaching 3 a class you have to go to the TASER company website, 4 look at all the latest information, incorporate that 5 into your class. Any TASER bulletins, product 6 warnings or training information has to be passed on 7 to your students as it becomes available. 8 So, for example, in 2009 when the target 9 change took place everybody immediately -- all the 10 instructors had to immediately go tell their 11 students and their officers here's the target change 12 effective immediately, so that's how it works. 13 Q. Now, when you say you went through the 14 master instructor school, does that mean you're 15 certified as a master instructor for TASER? 16 A. No. The reason is, I went through the 17 master instructor school to gain the information, 18 but I did not want the certification even though I 19 was entitled to it. I took all the tests, passed 20 everything but on the fourth day of the program one 21 of the legal people came in and said we don't 22 consider master instructors experts. 23 So I went to the Legal, vice president of 24 Legal and said that doesn't make any sense. He 25 goes, "All a master instructor is is someone who can</p>
<p style="text-align: right;">Page 246</p> <p>1 EXAMINATION 2 BY MR. HALL: 3 Q. Dr. Peters, can you briefly describe your 4 background with Tasers? 5 MR. OWENS: Object to the form. With 6 Taser themselves or with TASER the company? 7 MR. HALL: Tasers. 8 THE WITNESS: The device? 9 BY MR. HALL: 10 Q. The device. 11 A. I first became aware of what I call the 12 new Taser in 2005. I attended the 2005 TASER 13 conference on the devices that was here in Las 14 Vegas. Then I went through the master instructor 15 school. And then a couple years later when the X3 16 came out, I went back through the master instructor 17 school. I have, I believe, all the lesson plans 18 that TASER has which now can be downloaded off the 19 TASER website, believe it or not. 20 So I'm pretty familiar with the system as 21 it works. The contracts that are signed by 22 trainers, the bulletins that are issued. I call 23 them on a regular basis, more of an as needed basis 24 that is determined by the company. And then when 25 those bulletins -- the way that process works, every</p>	<p style="text-align: right;">Page 248</p> <p>1 go out and train instructors." He said, "We don't 2 consider them experts." 3 So I went to the senior trainer and vice 4 president at that time and said, "Look, give me a 5 certificate. I went through it, but don't certify 6 me because I don't want that designation." 7 So that's why I did. But I've been 8 through the XREP training. I've been through the 9 TASER technicians course, the evidence course, the 10 X2, the X26, the M26, the XP, I've been through 11 those trainings. 12 Q. Okay. I think in some of your testimony 13 just now and previously you had talked about how 14 warnings and protocols from TASER have changed over 15 the years; is that accurate? 16 A. Yes. 17 Q. Once an officer receives training, how, 18 if at all, are those changes in warnings or changes 19 in protocols coming from TASER, how are those 20 communicated to officers? 21 MR. OWENS: Object to the form of the 22 question and to the extent that this is possibly a 23 new opinion that is not contained in his report. 24 THE WITNESS: TASER International has a 25 software program, I'll use that, I don't know how</p>

JOHN PETERS, PH.D.  
ROBINSON vs. The CITY OF MADISONOctober 20, 2016  
249-252

<p style="text-align: right;">Page 249</p> <p>1 else to describe it, that whenever a change comes</p> <p>2 out it's communicated electronically with all</p> <p>3 instructors. And that is timestamped and documented</p> <p>4 on the software that it was sent to that instructor.</p> <p>5 Because of the contract that you sign</p> <p>6 with the company that says upon receipt of any new</p> <p>7 information it becomes the instructor -- the</p> <p>8 instructor's obligation at that point to open that</p> <p>9 e-mail or letter, read it and then immediately pass</p> <p>10 it on to everybody who he or she is trained.</p> <p>11 Generally the officers are in a department, so they</p> <p>12 pass it on to the department right away.</p> <p>13 MR. HALL: That's all the questions I</p> <p>14 have.</p> <p>15</p> <p>16 FURTHER EXAMINATION</p> <p>17 BY MR. OWENS:</p> <p>18 Q. I want to be clear that you didn't get</p> <p>19 the certification from TASER as a master instructor</p> <p>20 because they told you during the course you wouldn't</p> <p>21 be considered an expert by TASER?</p> <p>22 A. Correct.</p> <p>23 Q. And that mattered to you because it would</p> <p>24 affect your ability to hold yourself out as an</p> <p>25 expert and master instructor; is that right?</p>	<p style="text-align: right;">Page 251</p> <p>1 MS. HARRELL: None for me. Thank you.</p> <p>2 MS. REPORTER: Kathryn, are you going to</p> <p>3 need a copy of the transcript?</p> <p>4 MS. HARRELL: Yeah. Can you do a</p> <p>5 condensed and e-trans.</p> <p>6 (Thereupon, the taking of the deposition</p> <p>7 concluded at 4:47 p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 250</p> <p>1 A. No, I didn't refuse it for that purpose.</p> <p>2 I refused it because when you make a statement like</p> <p>3 that to about 400 people and then you make it around</p> <p>4 the country, I didn't want somebody coming in going,</p> <p>5 TASER said they don't even consider you an expert.</p> <p>6 So I took the knowledge, read the research, did all</p> <p>7 of those things, conducted some of my own primary</p> <p>8 research on Taser deployments and left it at that.</p> <p>9 Q. You didn't want TASER to undermine your</p> <p>10 ability to hold yourself out as an expert in</p> <p>11 consulting and providing expert testimony concerning</p> <p>12 TASER; is that correct?</p> <p>13 A. No, I didn't want plaintiff or defense</p> <p>14 counsel come in and say even the company doesn't</p> <p>15 consider you an expert because you went through a</p> <p>16 five-day training program. It's much bigger than</p> <p>17 that. And I questioned them pretty hard about that,</p> <p>18 but I didn't go to the training to become an expert,</p> <p>19 I went to the training to understand how the device</p> <p>20 worked and what it did. The basic instructors I had</p> <p>21 no problem with, but the extra five days is where</p> <p>22 the red flag went up.</p> <p>23 Q. Got it.</p> <p>24 MR. OWENS: That's, I think.</p> <p>25 MR. HALL: Kate, no questions?</p>	<p style="text-align: right;">Page 252</p> <p>1 REPORTER'S DECLARATION</p> <p>2 STATE OF NEVADA )</p> <p>3 ) ss</p> <p>4 COUNTY OF CLARK )</p> <p>5 I, Jualitta Stewart, a duly commissioned</p> <p>6 Notary Public, Clark County, State of Nevada, do</p> <p>7 hereby certify:</p> <p>8 I reported the taking of the deposition</p> <p>9 of the witness, JOHN G. PETERS, JR., PH.D.,</p> <p>10 commencing on Thursday, October 20, 2016, at the</p> <p>11 hour of 9:13 a.m.</p> <p>12 That prior to being examined, the witness</p> <p>13 was by me duly sworn to testify to the truth, the</p> <p>14 whole truth, and nothing but the truth.</p> <p>15 That I thereafter transcribed my said</p> <p>16 shorthand notes into typewriting and that the</p> <p>17 transcript is a complete, true, and accurate</p> <p>18 transcription of said shorthand notes.</p> <p>19 I certify that I am not a relative or</p> <p>20 employee of any party involved in said action, nor a</p> <p>21 person financially interested in the action.</p> <p>22 IN WITNESS WHEREOF, I have hereunto set</p> <p>23 my hand and affixed my official seal in my office in</p> <p>24 the County of Clark, State of Nevada, this 1st day</p> <p>25 of October, 2016.</p> <p style="text-align: right;"><i>Jualitta Stewart</i></p> <p style="text-align: right;">JUALITTA STEWART, RPR, CCR No. 807</p>